12:33:41 Q. Let's change the scenario and assume
12:33:45 that it's a new manufacturing capacitor manufacturer
12:33:51 who does not have -- is a blank page, does not have a
12:33:55 library, and the task is design the 5-volt rated
12:34:03 capacitor.
12:34:04 I cannot go -- I'm a designer there. I
12:34:07 cannot go to the library.
12:34:09 Where would I turn to get my design?
12:34:16 How would I be able to then determine
12:34:18 what the distance --
12:34:20 I don't have the distance in the past.
12:34:22 I don't have anything like that. I cannot emulate the
12:34:25 past.
12:34:25 What do I do then to determine that
12:34:28 distance?
12:34:30 A. Two comments:
12:34:33 One is that the -- if in deed we're
12:34:36 talking exclusively U.S. MLC manufacturers.
12:34:42 Q. Okay.
12:34:44 A. The population of experienced design
12:34:48 people is small, and the same ones move back and
12:34:54 forth. And they take their experience with them.
12:34:57 So they might have some general
12:34:59 guidelines they would carry with them.
12:35:06 B, if in deed we had a brand-new clean

12:35:11 slate, you'd do this by trial and error. You would
12:35:15 design some parts, you'd take a sample, and you'd see
12:35:21 whether they worked as you had designed them to be.
12:35:26 If they did, great. If they didn't,
12:35:29 you'd tweak something else and you'd make a few more
12:35:33 designs and you'd pick the optimum one.
12:35:38 Q. And how would you know whether it met
12:35:41 your design or didn't meet your design if you didn't
12:35:48 know to begin with what design you had?
12:35:51 If you didn't have any design, how would
12:35:54 you then compare what the sample is to that?
12:35:58 What's the point of reference then?
12:36:00 That's what I'm not clear.
12:36:00 A. The point of reference is the order to
12:36:03 which you're manufacturing parts.
12:36:05 If I as a manufacturer have an order for
12:36:09 20 microfarad capacitors, plus or minus three percent
12:36:15 at five volts and I want them to be within some sort
12:36:23 of temperature range, I would test those capacitors to
12:36:28 see whether they met all of those parameters being
12:36:33 specified on the incoming order.
12:36:38 Q. But how --
12:36:40 When you have a temperature rating and
12:36:44 voltage rating and the microfarad rating, how would
12:36:51 you construct the initial sample to meet those

12:36:53 requirements first?
12:36:54 What would you do?
12:36:55 How many layers, what dielectric would
12:36:57 you select?
12:36:58 How do you do the first sample when you
12:37:01 only have 10 or 15 variables or however many the
12:37:05 customer says to you that they want?
12:37:08 How do you do the first design with
12:37:10 these parameters?
12:37:14 A. Another level of detail: Capacitors are
12:37:28 rated by the amount of variation in their electrical
12:37:36 properties allowed with temperature.
12:37:39 Q. Okay.
12:37:43 A. That allows me to group capacitor types
12:37:47 by that variation.
12:37:52 And I would have a different ceramic
12:37:55 formulation or perhaps two or three for each
12:37:59 temperature variation range.
12:38:01 Q. Okay.
12:38:03 A. So now I've got --
12:38:07 I know which ceramic formulation I want
12:38:12 to use, because that's been constrained by the
12:38:17 customer's allowing some variation with temperature.
12:38:23 When I buy that powder from a seller of
12:38:30 dielectric powders, he will -- he or she -- will have

12:38:40 made sample product in their own development, and he
12:38:46 will say for each layer, we'll say, of 1 mil thick
12:38:55 unfired tape, you will add this much capacitance.
12:39:03 Q. I see.
12:39:04 A. Therefore, I will count the number of
12:39:06 layers I need to get to get that much capacitance. I
12:39:11 will put some blank layers for mechanical protection
12:39:15 on the top or bottom. And that will give me my count
12:39:24 and initial target thickness of the layers.
12:39:30 He will have -- he or she -- will have
12:39:32 also in their building of experimental capacitors that
12:39:38 they use to sell a dielectric powder, will have also
12:39:43 done this with a range of typical electroinks, inks
12:39:50 used to produce the internal conductive.
12:39:54 So he will say, if you use a
12:39:58 70 silver/40 palladium ink of this particular type,
12:40:02 you lay it down to this thickness, then you will -- we
12:40:09 know you produce a reliable usable part.
12:40:13 So now from that experience, assuming
12:40:16 I'm coming in green, I will know the electrode
12:40:20 material to use and how thick to screen it on.
12:40:26 I will use the voltage rating, 5-volt,
12:40:30 10 volts, 100 volts, 1,000 volts. That will allow me
12:40:34 to determine the thickness of the margin layer
12:40:39 identified here as 1 in Exhibit 4, the width of that

12:40:45 margin layer from external surfaces, to --
12:40:50 You will design that such that you won't
12:40:53 get what's called voltage breakdown under a particular
12:40:58 applied voltage. And you will have a factor of 2 or
12:41:02 5X margin.
12:41:04 So if I have a 20-volt application, I'll
12:41:07 have a thick margin. If I have a 5-volt application,
12:41:12 I'll have a thinner minimum margin required.
12:41:15 And I use that same logic and knowledge
12:41:18 to build up the design.
12:41:24 Q. And then you sinter that initial sample
12:41:34 design, and then you do electrical testing of it, and
12:41:37 then you adjust the design --
12:41:40 A. Yes.
12:41:40 Q. -- depending on whether you've achieved
12:41:42 your 20 microfarads in capacitance?
12:41:50 A. Yes.
12:41:51 Q. What if I did not have a customer?
12:41:53 I'm a new manufacturing company. I'm
12:41:56 green in terms of designing capacitors. And I don't
12:42:02 have a customer. And I want to design something new,
12:42:06 maybe to offer customers and say: "Here's a new great
12:42:12 capacitor. Develop your applications for it. This
12:42:14 would be the next break through."
12:42:16 How do I do it then?

12:42:17 How would I then design and calculate
12:42:20 things and --
12:42:20 What do I do then?
12:42:24 A. What's typically done in my experience
12:42:29 is that somebody will see a niche in the marketplace
12:42:35 where people who are not happy with the product
12:42:41 they're currently getting. And they will believe they
12:42:49 have a design which meets the requirements of that
12:42:54 niche better than anyone else.
12:43:02 Before such people form a capacitor
12:43:05 company, they will have an idea of who the customers
12:43:12 in -- who would buy product in that niche are.
12:43:16 They would usually go out and talk to
12:43:19 those customers, get a sense of what they'd be
12:43:26 interested in.
12:43:28 They would billed sample product,
12:43:31 deliver it to that potential customer, in order to try
12:43:36 to woo them away from their current customers.
12:43:40 Q. Current suppliers?
12:43:43 A. Current capacitor suppliers, yes.
12:43:46 Thank you.
12:43:47 Q. I see. I see.
12:43:50 So basically, they would talk to the --
12:43:54 If I --
12:43:55 Would it be correct to say they would

12:43:57 talk to the potential customer, get that customer's
12:44:04 desired specifications and all the particulars of that
12:44:09 particular capacitor that the customer may be looking
12:44:13 for, and then go and implement those specifications,
12:44:17 themselves, and if they are -- and if they did that,
12:44:22 then they would deliver product and the customer would
12:44:26 like and accept and --
12:44:27 A. Start to place orders.
12:44:28 Q. Place orders.
12:44:29 And replace the old products that it was
12:44:32 using potentially in the new stream of its own
12:44:35 products.
12:44:35 Is that --
12:44:36 A. In a simplified flow, yes.
12:44:38 Q. Okay. Okay. I see.
12:44:41 And when you said there are only a few
12:44:43 U.S. manufacturers of multi-layer capacitors, what are
12:44:47 those companies that you know of?
12:44:57 A. Off the top of my head and without
12:45:00 refreshing it, as companies are being bought up and
12:45:03 procured and change names, they include such people as
12:45:07 ATC, AVX, Presidio, Kemet, USCC, Central Lab, Novacap,
12:45:23 Murata, Eurofarad.
12:45:32 There's some Germans who have --
12:45:35 Those are -- Tucsonics. Those are some

12:45:38 of the current firms, some of them being much larger
12:45:41 across the board and others being niche suppliers.
12:45:44 Q. You've mentioned Murata.
12:45:47 A. Yes.
12:45:47 Q. I think it's a Japanese company.
12:45:50 A. Yes.
12:45:50 Q. But you're saying it's a U.S.
12:45:54 manufacturer.
12:45:54 I'm not sure --
12:45:54 A. They have production facilities here in
12:45:56 the U.S.
12:45:57 Q. I see.
12:45:58 So by "U.S. manufacturer", you mean if
12:46:00 you have production facilities in the U.S.?
12:46:02 A. Yes.
12:46:02 Q. Okay.
12:46:07 MR. SCHATZ: Timur, would now be a good time
12:46:12 to break for lunch?
12:46:12 Although you just indicated --
12:46:12 You were going to ask another question.
12:46:13 But are we getting close for a break for
12:46:13 lunch?
12:46:18 MR. SLONIM: Yes.
12:46:18 Maybe another ten minutes?
12:46:19 MR. SCHATZ: Fine.

12:46:20 BY MR. SLONIM:
12:46:21 Q. So when you say "U.S. manufacturer",
12:46:25 regardless of the ultimate ownership or the origin of
12:46:30 the company, it's whether there is a physical plant in
12:46:34 the U.S. to make capacitors?
12:46:35 Is that --
12:46:36 A. Yes, that's been the term in which I use
12:46:40 it.
12:46:41 Q. And in what context have you been using
12:46:43 that term?
12:46:45 A. Precisely as we've stated it, that if
12:46:49 you have a manufacturing facility and it usually with
12:47:06 that goes along a sales force also based in the
12:47:10 country, that you'd be considered a U.S. manufacturer.
12:47:17 Q. I'm sorry to interrupt. I thought you
12:47:21 were --
12:47:21 A. No problem.
12:47:24 Q. And by "sales force", how do you define
12:47:29 what sales force is?
12:47:31 A. People whose job occupation is primarily
12:47:35 selling and finding customers for product.
12:47:38 Q. Do they have to be employees of the
12:47:41 manufacturer to be considered sales force?
12:47:47 A. I'm sure some of them are reps who are
12:47:51 on commission or otherwise tied in with that.

12:47:55 I'm sorry. I'm not a expert in that aspect there.
12:48:00
12:48:01 Q. Let me just understand.
12:48:03 So let's say one person reps different companies or sells capacitors for different companies.
12:48:06
12:48:10 You would consider that person to be a sales force for all of the companies that this person reps, right, represents and sells?
12:48:12
12:48:15
12:48:18 A. Yes.
12:48:19 There are direct sales people and there are reps who sell for different companies, and then there are distributors who distribute product and they have sales people.
12:48:23
12:48:27
12:48:32
12:48:33 So it gets complicated.
12:48:36 Q. So the sales -- Is sales force an additional --
12:48:40
12:48:40 Have a sales force in the U.S., is that an additional requirement to having a manufacturing plant in the U.S.?
12:48:43
12:48:47
12:48:49 A. No, they're just, in my experience, usually not noncommitant.
12:48:52
12:48:59 If you have enough money to build a factory and hire workers, you usually also have enough money to have local sales people who can take customers on tours of the facility and do other
12:49:00
12:49:03
12:49:06

12:49:10 things.
12:49:10 Q. And does the plant, the manufacturing
12:49:15 plant, have to do all the operations of building
12:49:20 capacitors from start to finish to be defined as a
12:49:25 U.S. manufacturer?
12:49:28 A. Not currently.
12:49:30 There are -- Times have changed, and
12:49:36 there are offshore and in Mexico and in other Latin
12:49:41 American countries' plants which now do some of the
12:49:44 operations, especially for commercial product.
12:49:49 Q. So even if you have certain operations
12:49:51 conducted offshore or overseas or in some other
12:49:56 countries other than the U.S., if you have a U.S.
12:50:00 manufacturing plant that performed some operations on
12:50:03 the capacitor in the chain of making the capacitor,
12:50:06 the finished product, you would consider that
12:50:09 capacitor to be U.S. made?
12:50:14 A. I've not had the chance to draw an
12:50:16 opinion on what amount of and which operations needed
12:50:21 to be done here geographically in the U.S. to be
12:50:26 considered U.S.
12:50:28 Because times a have changed as more and
12:50:30 more has gone offshore.
12:50:32 Q. And what is your understanding --
12:50:33 Is there a particular set of rules for

12:50:36 that, that somebody would apply?
12:50:40 How is that quantified and explained?
12:50:45 Is there a particular standard?
12:50:48 What's the --
12:50:49 A. My experience has been with military
12:50:54 specifications of a higher reliability grade.
12:51:01 And what those people -- often based out
12:51:06 of Cincinnati -- would deem a supplier of parts --
12:51:17 And they have been faced with more and
12:51:20 more operations being done overseas for economic
12:51:27 efficiency. And while I could guess from memory what
12:51:31 it was back in the late '90s at the time this
12:51:35 application was filed, I don't -- that would be a
12:51:38 guess.
12:51:38 And I don't know exactly what they do
12:51:41 nowadays as to offshore versus U.S.
12:51:55 MR. SLONIM: I think we can break for lunch
12:51:57 now.
12:51:59 THE VIDEOGRAPHER: Going off the record.
12:52:01 The time is 12:51 hours.
12:52:03 (Whereupon a lunch recess was taken
12:52:05 from 12:51 p.m. to 1:56 p.m.)
13:57:11 THE VIDEOGRAPHER: Back on the record.
13:57:15 The time is 13:56 hours.
13:57:18 BY MR. SLONIM:

13:57:22 Q. Dr. Ewell, are you familiar with the discoidal feed-through capacitors?
13:57:29 Discoidal, d-i-s-c-o-i-d-a-l, feed-through capacitors?
13:57:36 A. Yes.
13:57:36 Q. Are any of them made in the U.S.?
13:57:42 A. Yes.
13:57:42 Q. And is -- And they're generally cylindrical in shape with one or more holes inside the body?
13:57:59 A. The newest generation of them.
13:58:01 Correct.
13:58:02 Q. And if we were to consider a discoidal feed-through capacitor that is cylindrical in shape, which is one cylindrical hole through it, how many sides would you say that dielectric body of that discoidal capacitor has?
13:58:22 MR. SCHATZ: I'm just going to caution the witness not to speculate or guess, especially if the witness has not developed opinions on certain issues.
13:58:27 BY MR. SLONIM:
13:58:33 Q. You may answer.
13:58:46 A. The discoidal element, the ceramic element of feed-through capacitor, would have at a minimum the top and bottom sides. It would have the

inside and outside of the discoidal element.

Then there would also be more minor sides where this feed-through post would be set up and sort of locked into it.

Q. Is the post part of the dielectric body?

A. It's part of the feed-through capacitor.

Q. I'm referring in my question about counting the sides to just the dielectric body of the discoidal feed-through capacitor that is cylindrical in form and has only one hole, cylindrical hole through it.

A. And that discoidal element -- let's distinguish it from an element of the feed-through capacitor -- that which is made usually of ceramic, a ceramic dielectric would have as a minimum four sides.

And I'd have to look at specific designs to see whether I would count other sides.

So they all have as a minimum four sides. They may well have additional sides required to interface with this post.

Q. There would be additional sides, you're saying --

A. Yes.

Q. -- in the dielectric body?

A. Yes.

14:00:49 Q. But it is possible to make a discoidal feed-through capacitor with just four sides?
14:00:58 Discoidal cylindrical with one cylindrical hole through it.
14:01:04 Would that dielectric body have four sides?
14:01:07 Is that right?
14:01:09 A. Theoretically, but not practically.
14:01:12 You want to be able to electrically connect with this post. And you usually need some surface in that dielectric element that matches a surface in the post.
14:01:30 So there would be an additional side or two. And I'd have to go back in and look at designs to say what's the minimum and what's typical.
14:01:45 Q. And would you say that where the discoidal capacitor would meet the requirements of Claim 1 of the 356 patent, of the one we were talking about --
14:02:00 A. Can I look?
14:02:01 Q. Absolutely.
14:02:02 A. I need to look at that claim.
14:02:04 Q. Claim 1, that's Exhibit 3, 356 patent.
14:02:10 I believe it starts at Column 12.
14:02:16 A. Column 12.

14:02:17 Q. Line 59.
14:02:20 MR. SCHATZ: And I'll just caution the witness
14:02:22 not to speculate if it requires developing opinions
14:02:26 that he has not yet developed.
14:02:26 BY MR. SLONIM:
14:02:31 Q. You may answer.
14:02:34 MR. SCHATZ: If it doesn't require you to
14:02:36 guess or speculate or if you require additional time
14:02:40 to form opinions.
14:03:05 THE WITNESS: I would need to look very
14:03:06 carefully at the wording here and at the design of the
14:03:15 discoidal feed-through capacitor you're talking about
14:03:18 to see whether it fits.
14:03:22 All of the contacts are talked about
14:03:26 being external. And, in deed, the discoidal element
14:03:38 involved in a feed-through capacitor has contacts on
14:03:41 the exterior surface in context of the interior
14:03:46 surface, the hole.
14:03:47 And so I'm not sure whether it meets
14:03:49 this or not.
14:03:49 (Whereupon Exhibit 5 was marked for
14:03:51 identification)
14:03:51 BY MR. SLONIM:
14:03:56 Q. Very well.
14:04:07 I'm placing before you what I've marked

14:04:09 as an Exhibit 5, which is an example of a discoidal
14:04:14 capacitor, I think.
14:04:15 A. Okay.
14:04:15 Q. Would you identify for the record what
14:04:25 this document appears to be?
14:04:26 I believe you probably haven't reviewed
14:04:28 this before.
14:04:29 Is that correct?
14:04:30 A. That is correct. This is identified at
14:04:33 its top as United States Patent Number
14:04:42 US 6,545,854 B2, dated April 8, 2003.
14:04:55 Q. Let's say we turn to the second page of
14:04:57 that exhibit. And there is a figure called Figure 2A.
14:05:02 A. I see that Figure 2A.
14:05:04 Q. Is that the discoidal capacitor -- an
14:05:09 example of a discoidal -- cylindrical discoidal
14:05:13 capacitor with one hole?
14:05:14 MR. SCHATZ: I'm going to object --
14:05:16 Are you finished with your question?
14:05:18 MR. SLONIM: Yes.
14:05:19 MR. SCHATZ: I'm going to object in that
14:05:23 you've just handed the witness a patent that he
14:05:26 admittedly has not yet reviewed.
14:05:28 And you're asking him to develop
14:05:32 opinions and answer questions upon that. And it

14:05:36 necessarily requires speculation and guessing, and he
14:05:43 hasn't had sufficient time to review.
14:05:45 I'll caution the witness, do not guess
14:05:47 or speculate about things you have not developed
14:05:49 opinions on.
14:05:49 BY MR. SLONIM:
14:05:50 Q. Is that a typical -- one of the
14:05:52 discoidal capacitors you have had experience with, at
14:05:59 least the shape of that capacitor?
14:05:59 A. The shape appears to be -- to have a
14:06:01 definite opinion. I'd need to read the context.
14:06:04 Q. I'm not asking you about -- I'm just
14:06:08 using this as a representative design or as a
14:06:11 representative shape just to put some concrete things.
14:06:14 I'm not talking about what this patent
14:06:16 discloses or doesn't or claims, and I understand that.
14:06:19 That's not my question.
14:06:21 And in Figure 2B, would you --
14:06:26 A. Again, we're on Sheet 1 of 2 --
14:06:29 Q. Correct, of Exhibit 5.
14:06:32 A. Okay.
14:06:32 Q. Would you think this would be a
14:06:36 representative cross section of that particular design
14:06:41 of Figure 2A of the discoidal capacitor?
14:06:45 Does that look -- what you would expect

14:06:49 a discoidal capacitor -- one of the designs of the
14:06:51 discoidal capacitor to have internal, electrodes and
14:06:56 dielectric layers?
14:06:57 Is that --
14:06:58 MR. SCHATZ: Objection. Multiple compound
14:07:01 question.
14:07:01 And again, I'll caution the witness not
14:07:03 to speculate.
14:07:03 BY MR. SLONIM:
14:07:04 Q. You may answer.
14:07:12 A. The schematic shown in Figure 2B, I see,
14:07:18 is an incomplete representation of the elements shown
14:07:25 in 2A. But it may have been developed, and that's
14:07:29 purely speculation, to highlight a particular feature
14:07:35 of 2A.
14:07:37 Q. Are you familiar with any discoidal
14:07:40 capacitors that look like Figure 2A, an actual design
14:07:46 of a discoidal capacitor that would in the outward
14:07:49 appearance look like a Figure 2A?
14:07:53 A. I have seen discoidal elements.
14:07:57 Q. By "elements", you mean a capacitor,
14:08:01 Figure 2A?
14:08:05 A. It's -- I've never seen them used in
14:08:09 that simple-looking configuration. I've always seen
14:08:15 them built up into more complex devices where this is

14:08:19 simply one piece.

14:08:21 Q. But would one piece function as a
14:08:23 capacitor if you --

14:08:26 A. It would provide capacitance to it.

14:08:31 Q. Okay. And you're familiar with at least
14:08:35 one of such designs where there may be a battery of
14:08:40 these or an array of these capacitors, Figure 2A, that
14:08:46 you've seen in the course of your career?

14:08:49 A. I've not done a great many cross
14:08:52 sections to be able to say how representative the
14:08:57 schematic shown in 2B is of 2A.

14:09:04 You know, you need to take apart -- take
14:09:07 them apart and look at them in the microstructure to
14:09:10 say, hey, that's typical, or that's not typical.

14:09:13 I'm not able to do that.

14:09:17 Q. And what's the difference between a
14:09:19 schematic of a capacitor, let's say, of Figure 9A of
14:09:27 the 356 patent, and the cross section of --

14:09:32 What would be the difference of the
14:09:34 discoidal capacitor that you're saying you need more
14:09:39 familiarity?

14:09:40 I thought you cross section them, I
14:09:43 guess, using the same techniques to cross section?

14:09:46 MR. SCHATZ: I will counsel the witness not to
14:09:50 speculate and to form opinions on the spot when time

14:09:54 is required to do so.

14:09:54 BY MR. SLONIM:

14:09:57 Q. You may answer.

14:10:04 A. Referring to Figure 9A of the 356
14:10:12 patent, in this configuration, I have seen many more
14:10:20 examples so as to be familiar with the types and
14:10:26 arrangements of defects which one can consider both in
14:10:31 a typical and an atypical place.

14:10:34 I've not had enough depth of experience
14:10:38 to have that same consideration for the discoidal
14:10:42 configuration.

14:10:45 Q. And how does your experience with the
14:10:50 defects in the multi-layer capacitors relates to
14:10:57 Claim 1 of the 356 patent that is asserted against
14:11:02 ATC?

14:11:02 A. Let me read that.

14:11:03 Q. Absolutely.

14:11:04 I think that begins at column 12, line
14:11:08 59.

14:11:47 A. Now, can I get you to repeat your
14:11:50 question again?

14:11:50 I've read Claim 1.

14:11:51 Q. Yes.

14:11:52 How does your experience with the
14:11:53 defects in multi-layer capacitors relates to Claim 1

14:11:57 of the 356 patent?

14:12:01 MR. SCHATZ: I'll object to the vagarities of
14:12:04 the question with regard to the use of the term
14:12:07 "relate".

14:12:07 BY MR. SLONIM:

14:12:09 Q. You may answer.

14:12:17 A. Claim 1 does not relate to defects at
14:12:19 all. It simply relates to an arrangement of
14:12:22 dielectric plates and of conductive plates.

14:12:29 So I don't yet grasp the context that
14:12:32 you're talking about defects in this arrangement.

14:12:35 Q. Does Claim 1 require any particular --

14:12:42 Does Claim 1 require absence of any
14:12:45 defects in the capacitor encompassed by Claim 1 or
14:12:50 claimed in Claim 1 of the 356 patent?

14:12:53 MR. SCHATZ: I'm going to object to the extent
14:12:55 it requires drawing a legal conclusion as to the
14:12:57 meaning of the terms.

14:12:59 You're asking a expert witness to opine
14:13:02 on legal terms.

14:13:05 But subject to that objection, if you
14:13:06 can answer, feel free.

14:13:09 BY MR. SLONIM:

14:13:10 Q. You may answer.

14:13:17 A. In my opinion as one of ordinary skill

14:13:19 in the art, there are no capacitors completely free of
14:13:23 defects. None of them are perfect.
14:13:26 Most capacitors are free from
14:13:29 significant defects which will affect the operation
14:13:32 over a period of time.
14:13:37 And I understand Claim 1 to be relating
14:13:42 to such a usable capacitor, and therefore, there's an
14:13:45 assumption that it can be manufactured of three of
14:13:51 such significant defects.
14:13:54 Q. Where does the word "use" appear in
14:13:58 Claim 1?
14:14:00 Can you point me to the line and read me
14:14:02 the phrase where it says it has to be a usable
14:14:05 capacitor or any variation of the word "use"?
14:14:13 A. I do not see that terminology there.
14:14:21 That's just part of my understanding as
14:14:25 one of ordinary skill in the art, that one would only
14:14:30 make a capacitor that could be usable, that that would
14:14:35 be implied in making a capacitor that I would want to
14:14:38 do something with.
14:14:40 Q. What if I didn't have a use for a
14:14:43 capacitor?
14:14:44 I was just practicing my art, and I made
14:14:47 a capacitor for which I didn't at this time have a
14:14:51 use.

14:14:52 Would that be a capacitor?
14:14:56 A. Yes.
14:14:57 Q. And what if I find a use for it later?
14:15:00 Does that -- How does that relate to
14:15:01 Claim 1?
14:15:04 So let's say I made a capacitor. I
14:15:06 don't have any use for it.
14:15:08 You would say it's outside of the claim
14:15:10 of Claim 1?
14:15:11 A. No.
14:15:11 Q. It's within the scope of Claim 1?
14:15:13 A. Yes.
14:15:14 Q. But you just said in some instance, you
14:15:20 imply usage.
14:15:21 But I said to you in my hypothetical, I
14:15:23 don't have any particular use.
14:15:25 MR. SCHATZ: Objection. That's a
14:15:27 mischaracterization. It's frankly just a flat out
14:15:30 misunderstanding of the testimony. And therefore,
14:15:32 you're rephrasing the testimony earlier as deceptive.
14:15:36 I object to that extent.
14:15:37 BY MR. SLONIM:
14:15:37 Q. You may answer.
14:15:42 A. The use need not be in the immediate
14:15:49 timeframe of its manufacturing.

14:15:52 People manufacture capacitors or capacitor elements for which they anticipate there would be a use in the future, as well as immediate use.

14:16:08 And your example where you thought of a use not at the time of manufacturing but sometime in the future, to me would be encompassed in the usable capacitor.

14:16:21 Q. But does Claim 1 require usable capacitor?

14:16:25 MR. SCHATZ: Objection. Asked and answered.

14:16:27 The witness already answered your question.

14:16:28 BY MR. SLONIM:

14:16:29 Q. You may answer.

14:16:31 A. Is that --

14:16:32 Q. A requirement of Claim 1 as construed by the Court of the 356 patent.

14:16:40 A. And I don't know what's construed by the Court.

14:16:43 But I would say that one of ordinary skill in the art would consider a derivative requirement of something that they built was that it should be usable.

14:17:03 Q. Have you provided any opinions about legal terms in your declaration that you've submitted to the Court in this case, which is Exhibit 2, I believe?

MR. SCHATZ: Objection. Vague.

BY MR. SLONIM:

Q. If you understand the question.

MR. SCHATZ: To the extent you understand the question, you can answer.

THE WITNESS: I have certainly given my expert opinion as to how a technical person of ordinary skill in the art interpret the term.

I have not attempted to say this is a legal interpretation with -- and deal with matters of precedence and stuff and legal definitions.

BY MR. SLONIM:

Q. What do you understand the function of the patent claims to be?

A. On the basis of very little legal education, I see a patent claim as -- once a patent is granted, as very similar to a government granted sole license to build and sell something that falls within the claim.

Q. And would it be fair to say that the owner of that license would have a legal right to exclude anybody else as not having that license from

14:18:37 making anything that falls within the claim?

14:18:40 Is that your understanding?

14:18:42 A. Let's ask that one more time, and I'll

14:18:44 take it in pieces.

14:18:45 Q. And would it be fair to say that the

14:18:49 owner of the patent claim would have a legal right to

14:18:54 exclude or prevent anybody else who doesn't own the

14:18:59 patent from making anything that falls within the

14:19:03 scope of patent claims?

14:19:06 MR. SCHATZ: I'm going to object to the extent

14:19:09 that you're asking an opinion regarding what is

14:19:12 clearly a legal issue.

14:19:15 But the witness is allowed to answer to

14:19:19 the extent he understands what rights a patent allots

14:19:23 to someone, to the extent you know.

14:19:27 THE WITNESS: Speaking purely as amateur lay

14:19:31 person, that's my understanding of what a patent

14:19:34 grants.

14:19:35 BY MR. SLONIM:

14:19:36 Q. So you agree with me?

14:19:37 Is your answer to my question "yes"?

14:19:40 MR. SCHATZ: No, he --

14:19:41 I'm going to object.

14:19:42 He answered what he understands to be

14:19:44 the case. He's not agreeing with anything you said.

14:19:48 He's just stating what he understands.
14:19:48 BY MR. SLONIM:
14:19:52 Q. And did you in preparation of your
14:19:54 declaration, did you study the Claim Construction
14:19:58 Order?
14:20:02 A. If that's -- And the terminology,
14:20:06 "Claim Construction Order", is new to me. If that's
14:20:09 one of the documents listed in my declaration, I did
14:20:14 look through that.
14:20:17 Q. Why don't we take a look at your
14:20:19 declaration, which is Exhibit 2.
14:20:25 It should be somewhere on the Page 2 at
14:20:37 the top.
14:20:38 Could you tell me if you've listed the
14:20:41 Claim Construction Order as one of the documents
14:20:43 you've used in preparation?
14:20:45 A. Yes, it is down there on the list by
14:20:48 that terminology, yes.
14:20:50 Q. And how long did you study that
14:20:58 document?
14:21:02 A. I'd have to say less than ten hours.
14:21:04 Q. You spent ten hours exclusively reading
14:21:08 that document?
14:21:10 A. Or a maximum of ten hours.
14:21:12 As I recall, it's a -- fairly thick, and

14:21:18 it's -- was a bit confusing as to how it was
14:21:21 structured, yes.
14:21:24 Q. And by fairly thick, you mean how many
14:21:28 pages was it?
14:21:29 A. It appeared to be -- and this is pure
14:21:33 memory without having it in front of me -- probably on
14:21:37 the order of 30 or 40 pages or more.
14:21:41 Q. Let's see. I think I might have a copy
14:21:49 I would like to show you to refresh your recollection.
14:21:57 MR. SLONIM: This should be Exhibit 6, I
14:21:58 believe.
14:21:58 (Whereupon Exhibit 6 was marked for
14:21:58 identification)
14:21:58 BY MR. SLONIM:
14:22:05 Q. I'm placing before you a document marked
14:22:10 Exhibit 6.
14:22:11 A. Okay.
14:22:12 Q. Could you please identify it for the
14:22:14 record?
14:22:16 A. I see over in the right-hand side, the
14:22:21 words "Claim Construction Order" and "Civil Action No.
14:22:30 08cv335 IEG (NLS)".
14:22:42 Q. Have you seen this document before this
14:22:43 deposition?
14:22:45 A. Yes, I have.

Q. And do you know it as the Claim Construction Order?

A. I do now.

Q. You didn't know it before this deposition --

A. Well, I've seen the words there, but not made -- I knew this more in terms of by the contents, much of which is a proposed table of alternate definitions for particular terms.

That's what it meant to my lay eyes.

Q. I see. I see.

And then when you said in your declaration --

And when you refer in your declaration to the Claim Construction Order as the document you've used in preparation, were you referring to Exhibit 6, the document --

A. Yes, I was.

Q. And how long did you study this document?

A. I mentioned this was on the order of -- I'd have to say somewhere between 6 and 10 hours.

Q. Did you discuss this document with anybody else, with anybody?

A. I believe I have discussed it with the attorney to my right, Brett Schatz.

Q. Anybody else?

A. No.

Q. How long -- How many discussions with Mr. Schatz did you have about this particular document?

A. I recall no discussions which were exclusively on this. But I believe this was mentioned in at least three discussions.

Q. And do you have notes from those discussions?

Did you take notes for any of those three discussions you've mentioned?

A. I did.

I also have a yellow tagged copy of this with notes of my own on it.

Q. Okay. And that document with your own notes and your notes of the conversations are at your house?

A. Yes.

Q. We would like to see them during the inspection, or if it is possible, we would probably ask that they be produced before the inspection, as well as all of your notes of your conversations with counsel that you've testified to here today.

14:25:19 MR. SCHATZ: Just to make it easy, if you
14:25:22 would summarize your requests after the deposition so
14:25:25 we know what you're looking for, and then we'll
14:25:28 respond to those.
14:25:32 MR. SLONIM: I think we have an outstanding
14:25:36 document request about that, but we'll discuss it
14:25:38 after the deposition.
14:25:39 Q. What do you understand the
14:25:43 Claim Construction Order to be?
14:25:55 A. I believe this to be a document which
14:26:08 summarizes the arguments and presents the Court's
14:26:21 findings as to the definition of certain specific
14:26:27 terms that are in the 356 patent.
14:26:32 Q. And do you understand that the Court, by
14:26:36 entering this Order, pronounced what those definitions
14:26:40 are, announced them?
14:26:42 A. Yes.
14:26:42 Q. And --
14:26:44 A. I believe they are included in this.
14:26:46 Q. And if you look up at Page 16 of the
14:26:51 Claim Construction Order, Exhibit 6, are those the
14:26:55 definitions which you understand the Court said the
14:26:59 words in certain claim elements in the 356 patent
14:27:04 mean?
14:27:04 A. Yes, that's my understanding, that this

14:27:08 page summarizes the Court's construeal, by which I
14:27:13 assumed are findings, as to appropriate definitions
14:27:17 for those six terms.
14:27:19 Q. And did you apply those definitions when
14:27:25 you --
14:27:27 Did you follow these definitions when
14:27:29 you were drafting your declaration?
14:27:32 A. I did.
14:27:32 Q. Is your declaration consistent, in your
14:27:36 opinion, with the claim elements as they were
14:27:42 construed by the Court?
14:27:45 A. That my declaration is in deed based on
14:27:51 these specific definitions. And I think I quote them
14:27:56 verbatim.
14:27:58 Q. And once you've quoted them, did you
14:28:01 apply them the way the Court has construed them?
14:28:05 A. Applied them?
14:28:06 Q. In your declaration, to arrive at your
14:28:10 opinions that you've expressed --
14:28:12 A. I used them, if that's what you mean by
14:28:15 apply.
14:28:17 Q. Did you use them consistently with the
14:28:20 way the Court has defined the respective elements, or
14:28:24 did you deviate in any respect from any of the
14:28:28 definitions of the Court when you gave your

14:28:34 declaration and arrived at the opinions that you've
14:28:36 expressed in your declaration?
14:28:40 A. In my understanding, I have not deviated
14:28:42 from any of these.
14:28:44 Q. In any way?
14:28:47 A. That's -- That's my current
14:28:49 understanding, yes.
14:28:49 Q. If you would be so kind, could you
14:28:58 direct me to the claim element that the Court has
14:29:02 construed that requires a capacitor of Claim 1 to be a
14:29:10 usable capacitor as you have told us before?
14:29:16 Do you see the word "usable capacitor"
14:29:18 or "use" -- or any form of the word "use" in any of
14:29:23 the terms from Claim 1 that the Court has construed?
14:29:28 MR. SCHATZ: Objection. Asked and answered.
14:29:29 The witness testified that the term
14:29:32 "usable" does not appear in the claim language.
14:29:35 MR. SLONIM: Brett, if you would limit your
14:29:38 objections to the objection in form and stop coaching
14:29:42 the witness, I would appreciate that, and the Court
14:29:45 would, too.
14:29:45 MR. SCHATZ: I'm not coaching the witness.
14:29:47 What I'm trying to do is rectify insolubly ambiguous
14:29:53 questions and ask that you not repeat questions that
14:29:57 you've already asked in an attempt to illicit a

14:30:01 different response that you like better than you got
14:30:04 the first time around.
14:30:05 MR. SLONIM: I would appreciate if your
14:30:07 speeches and coaching the witness would stop.
14:30:09 Q. You may answer.
14:30:13 A. I do not see in my reading -- my quick
14:30:22 reading at this point anything which implies or
14:30:27 directly states that usability is part of a
14:30:33 definition.
14:30:33 I believe my previous answer related to
14:30:36 how one of ordinary skill in the art would interpret.
14:30:42 Q. Is there a difference between a legal
14:30:49 definition as given by the Court in this Order and the
14:30:53 understanding of the one of ordinary skill in the art?
14:30:57 A. Definitely.
14:30:58 Q. And when you were giving your opinions
14:31:09 in the declaration, did you follow your understanding
14:31:13 as one of ordinary skill in the art as opposed to the
14:31:17 Court's definitions, the legal definitions the Court
14:31:22 has provided?
14:31:23 A. I did not see a contradiction between
14:31:27 them. So I did not choose one or the other.
14:31:34 I've attempted, I think in good justice,
14:31:38 to fit both.
14:31:44 Q. But do you have a different definition

14:31:48 than the Court has given for the -- let's say the
14:31:50 first element, substantially monolithic dielectric
14:31:50 body?
14:31:56 And could you read into the record the
14:31:56 Court's definition that you see on Page 16 of
14:31:59 Exhibit 6?
14:32:03 A. Number 1 -- which I believe relates to a
14:32:08 particular disputed term -- "Substantially Monolithic
14:32:14 Dielectric Body: A dielectric body largely but not
14:32:21 wholly without seams from the inclusion of plates
14:32:26 within the dielectric body.
14:32:30 Q. And you understand this to be the
14:32:35 Court's definition of the term "substantially
14:32:38 monolithic dielectric body"?
14:32:40 A. I understand that to be so.
14:32:41 Q. What is your definition of that term as
14:32:44 one of ordinary skill in the art?
14:32:48 MR. SCHATZ: Objection to the extent you're
14:32:51 asking if the witness has a definition versus whether
14:32:55 it's applied by one of ordinary skill in the art.
14:32:55 BY MR. SLONIM:
14:33:00 Q. You may answer.
14:33:05 A. As one of ordinary skill in the art, I
14:33:12 believe that to make this definition typically
14:33:25 applicable, that the definition would be expanded

14:33:31 upon, and the way which I have to talk about what it
14:33:39 means to be largely but not wholly without seams.
14:33:46 And in my declaration, I point to a sign
14:33:52 that there are seams as being the presence of voids
14:33:56 and gaps.
14:34:00 Q. So you think the way the Court has
14:34:02 defined this claim element, substantially monolithic
14:34:07 dielectric body, it is vague?
14:34:11 A. No. I believe it to be quite
14:34:15 determinable. And I was talking about how one of
14:34:19 ordinary skill in the art would go about determining
14:34:23 whether such seams are largely but not wholly present.
14:34:29 And one would go about determining that
14:34:32 by looking at whether there's an inordinate amount of
14:34:37 voids and gaps at the seam location.
14:34:43 Those are merely indicators that a seam
14:34:45 is there.
14:34:47 Q. And how many voids --
14:34:50 How many seams would you say this
14:34:55 definition requires, the Court's definition of the
14:35:01 substantially monolithic dielectric body?
14:35:04 MR. SCHATZ: Objection.
14:35:05 Is your question phrased in regard to
14:35:08 number?
14:35:12 MR. SLONIM: Let's first start with a number,

14:35:15 yes.
14:35:15 THE WITNESS: You would get a seam wherever
14:35:17 you have an electrically conductive plate in contact
14:35:25 with a dielectric layer which had been placed on top
14:35:30 of it, so that you'd get one seam for each plate.
14:35:34 BY MR. SLONIM:
14:35:34 Q. And is there a seam --
14:35:45 If you plate a layer of metal on a
14:35:51 dielectric, would you consider that there is a seam
14:35:51 between that layer of metal and the dielectric on
14:35:54 which it is plated?
14:35:56 A. On which it is deposited?
14:35:57 Q. Deposited.
14:36:03 A. Not -- No, because --
14:36:10 Again, I'm giving a technical
14:36:12 explanation. I have it to offer if you would like it.
14:36:16 Q. Please go ahead.
14:36:20 A. I've talked about the dielectric layer,
14:36:23 in this case being ceramic powder, within a polymeric
14:36:28 binder.
14:36:29 I talked about the electrically
14:36:31 conductive layer, code name "ink", as being metal
14:36:38 powder within a polymeric binder.
14:36:40 Now, they are laid down on top of each
14:36:42 other, and there's some interdiffusion in

14:36:47 interconnection of the two polymeric binders. So you
14:36:51 don't really have a seam there.
14:36:57 Q. And how many seams would you consider
14:37:01 that the dielectric body largely but not wholly
14:37:05 without seams from the inclusion of plates within the
14:37:07 dielectric body can have in order to be a
14:37:11 substantially monolithic dielectric body?
14:37:18 A. You could have a seam and a practical
14:37:32 definition have as a seam, which one of ordinary skill
14:37:37 in the art would be -- it would be visible somehow.
14:37:42 If I cannot see it by typical means of
14:37:47 detection through either cross sectioning or
14:37:50 fracturing and looking at the scanning on an electron
14:37:56 microscope, it's effectively not there.
14:37:58 But I could have one seam for each plate
14:38:01 included within that brick or chip.
14:38:07 Q. Now, let's say we make an assumption
14:38:10 that for each layer of the metal and the dielectric on
14:38:14 top of it, there is a seam that is visible --
14:38:16 A. Sure.
14:38:17 Q. -- under some method of detection.
14:38:20 A. Right.
14:38:20 Q. How many of these seams could a
14:38:23 dielectric body have in order to meet this claim
14:38:27 limitation as construed by the Court?

14:38:36 A. I don't see there being a claim
14:38:40 limitation on the number of seams involved. I don't
14:38:44 get a logical construction of that.
14:38:49 Q. What does it mean, "largely but not
14:38:52 wholly"?
14:38:54 Does that imply a particular number to
14:38:56 you?
14:38:56 A. No.
14:38:57 Q. Is that a -- basically a phrase of
14:39:04 degree?
14:39:06 A. A vague phase of degree.
14:39:17 That's speaking from a technical sense.
14:39:21 Q. And so you would not be able to apply
14:39:24 this Court's definition the way it's written now.
14:39:28 Is that your conclusion?
14:39:30 A. No, that's -- that's not my conclusion.
14:39:33 As one of ordinary skill in the art, if
14:39:37 I could make a body, which I believe embodies Claim 1,
14:39:41 I could fracture it and look at it by one of the means
14:39:45 we've talked about and say, hey, I can't see many
14:39:50 seams. I have 40 layers here. I can see three seams,
14:39:54 five seams, ten seams, but that's it.
14:39:57 I believe that would meet largely but
14:39:59 not wholly without it, without seams.
14:40:08 Q. So you're saying if you had 40 layers of

14:40:12 dielectric and metal, largely but not wholly could be
14:40:19 what percentage of seams, you're saying?
14:40:25 A. I would expect less than half. But
14:40:28 exactly how would depend upon the magnification of the
14:40:32 microscope I used and how the sample was prepared.
14:40:36 Q. I see. I see.
14:40:39 And in the 356 patent, did you see a
14:40:44 mention --
14:40:44 Have you studied the 356 patent, which
14:40:47 is Exhibit 3, I think?
14:40:51 A. Yes.
14:40:51 Q. How many hours did you spend studying
14:40:55 this patent?
14:40:57 A. I'd have to say on the order of six
14:40:59 hours.
14:40:59 Q. And when was that?
14:41:03 A. That was in two sessions, at least:
14:41:09 Once before the declaration, and once when I knew
14:41:14 there was to be a deposition afterwards.
14:41:17 Q. I see.
14:41:18 So a part of the six-hour review time of
14:41:23 the 356 patent was after you've submitted your
14:41:29 declaration?
14:41:29 A. A much smaller percentage of time, yes.
14:41:32 The majority of time was spent before.

14:41:37 Afterwards, it was spent reviewing my understanding of
14:41:40 it.
14:41:41 Q. And in your review of the patent, had
14:41:49 you done an adequate review in your opinion of the
14:41:52 patent?
14:41:55 A. From -- adequate from a technical point
14:41:57 of view with understanding what is being claimed.
14:42:03 Q. And this was a sufficiently detailed
14:42:08 review based on which you could submit a declaration
14:42:13 to the Court?
14:42:14 A. Yes.
14:42:14 Q. You did not need any additional time to
14:42:18 study the patent in order to make your declaration --
14:42:28 in order to express anything else in the declaration.
14:42:31 Is that --
14:42:35 A. I was asked to provide a declaration on
14:42:41 some very specific areas of disagreement about the
14:42:49 meaning of claims as related to one of ordinary skill
14:42:54 in the art.
14:42:54 And I think you have pointed out on
14:42:57 Exhibit 6, Page 16, those very specific claims.
14:43:02 So my review was from the point of view
14:43:05 of understanding those claims in context with the
14:43:10 patent, and then understanding what one of ordinary
14:43:16 skill in the art through my various interactions and

14:43:21 background would believe.

14:43:24 So it was from a particular point of

14:43:26 view.

14:43:27 Q. I see.

14:43:28 And by disagreement about the meaning of

14:43:30 claims, what are you referring to?

14:43:34 A. I'm in effect referring to the

14:43:40 Claim Construction Order, Exhibit 6, and to the

14:43:46 contents of this, which in my technical opinion relate

14:43:53 to disagreement on six particular claims for which the

14:43:59 Court has findings or construings.

14:44:04 Excuse my mangling of the technical

14:44:07 term, if there are construings.

14:44:10 Q. And what time did that disagreement

14:44:12 happen?

14:44:13 What's your understanding about the

14:44:15 timing of that disagreement?

14:44:16 A. I did not look at that when the various

14:44:19 pieces of papers were filed.

14:44:21 Q. That's fine.

14:44:22 Is it your understanding that this

14:44:24 disagreement has been resolved?

14:44:29 A. I have an understanding that the Court

14:44:32 has found on six specific terms and the appropriate

14:44:39 definition for those disputed terms.

14:44:41 Q. So is it your understanding that the Court has resolved the disagreement about the meaning of those specific terms?
14:44:50 A. I guess I'm not -- I'm not familiar with how you're using "resolved".
14:44:55 I do not know whether there can or have been any further related legal appeals or not.
14:45:04 Q. Looking at the Claim Construction Order --
14:45:10 A. Right.
14:45:10 Q. -- is it your understanding that the Claim Construction Order, after consideration of the arguments from both sides, from the position of one of ordinary skill in the art that was presented to the Court, has resolved what the meaning of the specific terms in dispute was?
14:45:36 A. In a legal sense, yes.
14:45:37 Q. What about in a technical sense?
14:45:43 A. I believe the Court's findings have given a very good and determinable definition to the terms.
14:45:58 How they would put in -- be put in practice by one of ordinary skill in the art, by one trying to design such product, I believe would require still some further specificity which can easily be

made.

You know, they would be --

As I have attempted in some cases to translate between the definitions and how one of ordinary skill in the art would make in terms of designing such a capacitor, that translation would have to be made.

Q. And could you mention to me all the things or parameters or however you want to call it in the Court's Claim Construction Order that require further specificity as you have just testified about?

A. May we go down and --

Again I'm --

Q. Element by element.

A. And I'm doing this without a full chance to study and to contemplate these terms.

But the first would be the phrase "largely but not wholly without seams", what does that mean to one who has a cross section of a product in front of them.

Q. Would you expect to find the answer to that question in the 356 patent?

MR. SCHATZ: I'll object.

To one of ordinary skill in the art?

Your question is vague without that

context.

BY MR. SLONIM:

Q. Do you see an answer to that question or --

Did you see in terms of your review of the patent in answer to my -- in answer to your question in the specification of the 356 patent?

MR. SCHATZ: And I'll object.

Are you asking that question in the eyes of someone of ordinary skill in the art, or not?

The question is vague.

BY MR. SLONIM:

Q. Could you direct me to the part of the 356 patent that you believe answers that question?

MR. SCHATZ: Same objection.

Are you referring to the question in regard to the eyes of someone of ordinary skill in the art, or not?

MR. SLONIM: To the extent Dr. Ewell claims to be of ordinary skill, I guess he's the only one present here.

Q. So unless you can put yourself into the mind of a person who is not of ordinary skill --

MR. SLONIM: I guess we'd have to take it through the eyes of Dr. Ewell, who is the only

14:49:01 deponent here.
14:49:05 THE WITNESS: And so your question is, if I
14:49:10 can attempt to understand it, can I find further
14:49:16 clarifying words in the 356 patent as one of ordinary
14:49:23 skill in the art which would enable me to make a
14:49:27 practical decision on whether a specific product in
14:49:32 front of me was largely but not wholly without seams?
14:49:38 Q. Does the Court Order require a practical
14:49:41 decision?
14:49:42 Where is the word "practical" in that
14:49:46 definition that the Court gave?
14:49:52 A. I do not see the word "practical" here.
14:49:59 Q. Correct.
14:49:59 So why are you using the word
14:50:03 "practical" or requiring the practical aspect if the
14:50:08 Court did not use the word "practical" or "require
14:50:12 practicality" of this?
14:50:18 A. I believe the Court has provided
14:50:23 definitions, definitions that are to be used within
14:50:27 the context of the 356 patent.
14:50:34 And my understanding is that one of
14:50:39 ordinary skill in the art, given a -- given product,
14:50:48 given a capacitor, should be able to look at that by
14:50:57 whatever means they are used to using, and providing
14:51:03 whatever interpretations come from their experience to

14:51:07 say that this product does or does not meet the
14:51:13 requirements of the claims of this patent.
14:51:21 Am I incorrect in that understanding?
14:51:24 Q. What is your expert opinion on that?
14:51:27 A. I believe that's a legal opinion as to
14:51:30 meeting claims of the -- of a patent.
14:51:39 I'd take you for the expert here, sir.
14:51:42 Q. You may be the only one in the room that
14:51:45 thinks that. Certainly, your counsel doesn't share
14:51:47 that view.
14:51:48 A. But my question was directed to you.
14:51:51 Q. Thank you.
14:51:53 May I redirect your attention to
14:51:57 Figure 9A of the 356 patent, which is Exhibit 3.
14:52:11 A. Okay. I'm now at Sheet 2 of 7, and I
14:52:16 have Figure 9A which has been annotated by myself.
14:52:21 Q. Excellent.
14:52:22 And now what I would ask you to do,
14:52:25 assume that Figure 9A is a fair representation of an
14:52:31 actual capacitor in cross section.
14:52:36 Would you be able to tell me, applying
14:52:39 the Court's definition of "substantially monolithic
14:52:43 dielectric body", whether Figure -- capacitor that in
14:52:51 cross section looks like Figure 9A, has a
14:52:55 substantially monolithic dielectric body?

14:53:00 A. By having actual product in front of me
14:53:05 that I could take a cross section of, and being one of
14:53:11 ordinary skill in the art, I believe that I could with
14:53:16 that cross section decide whether this body fits or
14:53:24 does not fit the description of being largely but not
14:53:29 wholly without seams.
14:53:29 Q. Excellent.
14:53:30 Why don't you do that right now.
14:53:32 Let's say you've obtained with your
14:53:33 level of magnification that you wanted the picture
14:53:38 that in cross section is Figure 9A in the patent, and
14:53:45 tell me whether that capacitor with that cross section
14:53:51 meets the definition of a dielectric body largely but
14:53:54 not wholly without seams from the inclusion of plates
14:53:57 within the dielectric body.
14:54:00 A. Figure 9A is a low magnification
14:54:05 schematic. We would take an actual microstructural
14:54:15 cross section, and in deed at significantly higher
14:54:20 magnifications, have to look at that. And to look
14:54:26 specifically at the seams to see whether they would
14:54:31 meet that.
14:54:31 So I'm -- This is not an adequate
14:54:35 example or representation for me to be able to do
14:54:38 that.
14:54:38 Q. Are you saying that one of ordinary

14:54:42 skill in the art would not be able from Figure 9A to
14:54:45 tell whether the -- it meets the Court's definition or
14:54:50 not?
14:54:50 A. Meets the Court's definition for --
14:54:55 Q. Substantially monolithic dielectric
14:54:59 body.
14:54:59 A. That is correct.
14:54:59 Q. Thank you.
14:55:00 MR. SLONIM: We should change the tapes.
14:55:02 THE VIDEOGRAPHER: This marks the end of tape
14:55:03 Number 2 in the deposition of Gary Ewell.
14:55:05 Going off the record.
14:55:06 The time is 14:54 hours.
14:55:13 (Whereupon a recess was taken)
15:12:01 THE VIDEOGRAPHER: Back on the record.
15:12:13 Here marks the beginning of tape
15:12:15 Number 3 in the deposition of Gary Ewell.
15:12:16 The time is 15:11 hours.
15:12:19 BY MR. SLONIM:
15:12:21 Q. Dr. Ewell, could you please turn your
15:12:23 attention to Figure 2A, as in "alpha," of the 356
15:12:28 patent, which is Exhibit 3?
15:12:31 A. Okay.
15:12:38 Q. And if you were presented with the
15:12:42 Figure 2A as a cross section of a capacitor, would you

15:12:47 be able to tell me under the Court's definition of
15:12:53 "substantially monolithic dielectric body", that that
15:12:58 capacitor represented by Figure 2A would meet that
15:13:02 definition?
15:13:04 MR. SCHATZ: Objection.
15:13:05 Are you saying that the micrograph would
15:13:08 be the figure, itself?
15:13:10 BY MR. SLONIM:
15:13:15 Q. You may answer my question if you
15:13:16 understand it.
15:13:19 MR. SCHATZ: Objection. Vague.
15:13:25 THE WITNESS: If I were given a suitably
15:13:30 prepared cross structure and micrograph at the
15:13:38 magnification I required of the capacitor
15:13:43 schematically shown in 2A, and just using the skills
15:13:51 of one of ordinary skill in the art, I believe, yes, I
15:13:57 could see with respect to claim Number 1 that I could
15:14:02 determine whether that particular capacitor as
15:14:08 represented by that micrograph met or did not meet
15:14:12 that definition of the -- in Term 1.
15:14:18 BY MR. SLONIM:
15:14:18 Q. Assume that Figure 2A is a micrograph at
15:14:27 the magnification that you required for this
15:14:29 particular capacitor.
15:14:33 Given that assumption, could you tell me

15:14:38 whether a capacitor represented by the cross section
15:14:41 presented at the -- that particular level of
15:14:44 magnification would meet or not meet the Court's
15:14:49 definition of "substantially monolithic dielectric
15:14:56 body"?
15:14:57 A. As I understand it, if I had the
15:15:02 micrograph at suitable magnification and suitable
15:15:06 preparation conditions of a capacitor schematically
15:15:11 represented in 2A, yes, given that micrograph, I could
15:15:15 tell.
15:15:16 Q. Does Figure 2A --
15:15:18 I'm asking you to assume that Figure 2A
15:15:23 represents that level of magnification that you
15:15:26 required.
15:15:27 A. It doesn't meet that.
15:15:30 Q. I'm asking you to assume that it is.
15:15:32 You're an expert. You can tell me what
15:15:36 you -- based on certain assumptions, what your
15:15:39 opinions would be.
15:15:39 So I'm asking you to assume that
15:15:43 Figure 2A represents a cross section at the level of
15:15:47 magnification you wanted to be able to give me and the
15:15:57 Court an opinion whether that capacitor represented by
15:16:01 Figure 2A meets or does not meet the definition of
15:16:07 "substantially monolithic dielectric body" as provided

by the Court.

MR. SCHATZ: I'm going to object.

BY MR. SLONIM:

Q. Do you understand what assumption I'm asking you to make?

A. I seem to hear -- let me reflect my assumption -- you're saying somehow assume that this drawing represents a real microstructure at a real magnification that I need.

Q. Correct.

A. And therefore, does Term 1 apply or not apply.

Q. Absolutely.

A. And my eyes deceive me. It's not at the right magnification, and it's not prepared appropriately for me to do that.

Q. So you're -- Sitting here today, you're unable to answer that question.

Is that right?

A. Give me a real micrograph, and I can answer it.

I cannot answer it with this schematic here. This is a drawing.

Q. Have you seen any micrographs in the 356 patent of a real structure of any of the capacitors

15:17:22 claimed in the 356 patent?
15:17:24 A. No, I haven't. But the combination of schematics here, the total set of them, plus the wording of the patent, plus the Court's definition, provide me the tools that given real product, I could decide, yes, it meets, no, it doesn't meet.
15:17:43 THE REPORTER: Did you say could or couldn't decide?
15:18:04 THE WITNESS: I could decide. Could, positively, definitely.
15:18:08 BY MR. SLONIM:
15:18:08 Q. So are you saying that Figure 2A does not represent a real product?
15:18:26 A. Correct. It's a schematic, in my terminology as an engineer, a representation.
15:18:36 Q. So that Figure 2A would not tell one of ordinary skill in the art whether a capacitor made according to the schematic would meet that claim limitation or not.
15:18:50 Is that your testimony?
15:18:52 MR. SCHATZ: Objection. Mischaracterization of the testimony.
15:18:54 BY MR. SLONIM:
15:18:55 Q. You may answer.
15:19:00 A. I believe that the contents of the

15:19:05 complete patent, all of the figures, all of the words,
15:19:11 and the Court's definition would provide me as one of
15:19:15 ordinary skill in the art the ability to give a real
15:19:20 sample, hard sample, cross section in front of me to
15:19:25 say whether it meets or does not meet.
15:19:30 But I can't single out one piece of the
15:19:32 patent and say that's enough, that's all I need.
15:19:38 Q. Do you see that additional --
15:19:40 Did you see that additional description
15:19:42 in the patent that in conjunction with Figure 2A could
15:19:46 give you that level of detail and magnification that
15:19:50 you require in order to determine whether a capacitor
15:19:55 represented schematically by Figure 2A meets or does
15:19:59 not meet the Court's definition of "substantially
15:20:04 monolithic dielectric body"?
15:20:05 A. No, that comes from my experience of one
15:20:07 of ordinary skill in the art, the magnification I
15:20:10 would have to use and any preparation techniques on
15:20:15 the capacitor, itself.
15:20:17 Q. Are you saying that the magnification
15:20:20 level and the preparation techniques are not specified
15:20:23 in the patent?
15:20:28 A. My study to date of the patent does not
15:20:32 show that level of detail, how I would have to examine
15:20:37 it.

15:20:39 But the -- I believe that a designer at
15:20:43 a capacitor house would have at his or her behest
15:20:50 enough knowledge and tools to be able to choose the
15:20:54 microscope and have the experience to prepare sampling
15:20:57 to make that judgment.
15:21:03 Q. Do you see any visible seams on
15:21:15 Figure 2A?
15:21:23 A. I don't see any seams.
15:21:24 I see lines which are meant to indicate
15:21:28 seams, but I see no real seams on 2A.
15:21:42 Q. So would you say based on the fact that
15:21:45 you don't see seams on Figure 2A, that this dielectric
15:21:50 body is without seams?
15:21:55 A. I'm not able to make that judgment.
15:21:59 2A is a drawing. 2A is not actual
15:22:01 product.
15:22:04 Q. If I asked you to assume that 2A
15:22:07 represents an actual product, this is the picture at
15:22:11 the highest level of magnification available at the
15:22:17 particular point in time, and this is presented to
15:22:17 you.
15:22:19 And I asked you to tell me whether you
15:22:22 see visible seams here.
15:22:24 Is that your testimony, that you don't
15:22:25 see any seams?

15:22:29 A. My testimony would be, if that this was
15:22:33 a true representation of a cross section through the
15:22:38 capacitor, it did not involve any etching thermally or
15:22:46 chemically, I would say I am able to detect seams
15:22:50 there.
15:22:55 Q. I don't believe you've answered my
15:22:57 question.
15:23:01 A. Please --
15:23:01 Q. I've asked you whether, assuming that
15:23:05 this is an actual product and an actual picture at the
15:23:09 highest level of magnification available to you --
15:23:13 A. Right.
15:23:14 Q. -- whether looking at this picture, you
15:23:18 can tell me whether there are visible seams to you or
15:23:22 not.
15:23:24 A. And I said with the understanding that
15:23:27 what I'm looking at is a cross section that has not
15:23:32 been etched, e-t-c-h-e-d, either thermally or
15:23:41 chemically, that I can then say that I see seams
15:23:45 there.
15:23:48 Q. Assuming that this has been prepared to
15:23:52 your satisfaction and etched chemically and thermally,
15:23:56 and this is what came out as a result of that etching
15:24:00 and at the highest level of magnification available to
15:24:05 you, there's nothing else you can do better or

15:24:08 different to obtain a different picture?

15:24:11 A. I would have it be without etching for
15:24:15 my first examination, no etching. And I would expect
15:24:20 not to see at this magnification seams.

15:24:32 Q. So is your testimony that there are no
15:24:37 seams in Figure 2A, or you don't expect seams in the
15:24:42 Figure 2A?

15:24:43 I'm not sure I quite get your answer.

15:24:46 A. My testimony is that the appearance of
15:24:50 2A leads me to conclude there are observable seams.

15:24:57 Q. How many?

15:25:01 A. One for each internal electrically
15:25:05 conductive plate.

15:25:09 Q. Could you count them for me, please?

15:25:20 And if you need to label them
15:25:22 individually so we can talk about particular ones,
15:25:25 that would be helpful, too, if that assists you.

15:25:36 A. I see 13 internal seams in the drawing
15:25:43 of Figure 2A in the 356 patent.

15:25:48 Q. And based on that count, could you now
15:25:52 tell me whether that dielectric body with 13 seams in
15:25:59 it meets the Court's definition of "substantially
15:26:04 monolithic dielectric body" as provided in Exhibit 6,
15:26:09 Claim Construction Order by the Court?

15:26:11 And I believe you have Page 16 of that

15:26:14 order in front of you.
15:26:15 A. Let me state, first, I have never seen a cross section that looks like -- like this that has such evident seams.
15:26:31 But if this in deed is representative of real product and I compared it with the wording here on Page 16 of Exhibit 6, I would have to say that it does not meet a definition here of Term 1, that it is not largely but not wholly without seams.
15:27:17 Q. So from that, would you conclude that this dielectric body is not substantially monolithic as defined by the Court, if you're saying it does not meet this definition?
15:27:30 MR. SCHATZ: I'm just going to object.
15:27:32 Given the assumptions that you posed with your initial question, is that how you're asking your question?
15:27:40 BY MR. SLONIM:
15:27:40 Q. You may answer.
15:27:42 A. That this hypothetical capacitor in 2A, I find does -- would not be considered as substantially monolithic.
15:28:01 Q. What would you consider this capacitor to be, then, if it's not substantially monolithic?
15:28:06 How would you describe it?

15:28:14 A. Less than substantially monolithic would
15:28:20 probably be the way I would describe it.
15:28:24 Q. So you would say it's below the level of
15:28:27 substantial monolithic by saying "less than"?
15:28:33 A. Right.
15:28:37 That substantially monolithic is a bar,
15:28:40 a level above which you're substantially below, you're
15:28:45 less than substantially or insubstantially.
15:28:49 But I don't know if that's a phrase.
15:28:51 Q. Is that one of the phrases you would use
15:28:53 as one of ordinary skill in the art in referring to
15:28:58 the dielectric bodies in substantially monolithic --
15:29:02 A. No.
15:29:02 Q. Would you use a phrase "substantially
15:29:04 monolithic," as one ordinary skill --
15:29:07 In your practice, have you used that
15:29:09 phrase referring to any of the dielectric bodies you
15:29:12 have encountered in your 24 years at
15:29:15 Aerospace Corporation?
15:29:19 A. My time at Aerospace has been primarily
15:29:23 with single chips or blocks.
15:29:27 Q. Okay.
15:29:28 A. And in which the focus is are they
15:29:31 monolithic or not.
15:29:34 And this, I would say, is not monolithic

15:29:37 if this were an accurate representation of a real part where the seams were so obvious in the condition in which I examined it.

15:29:54 I have not had a great experience with arrays of capacitors as we talked about where two individual chips might be at some stage sintered together in a third operation.

15:30:15 Q. And is it your understanding that a capacitor of Figure 2A is made by sintering two discrete parts by a third sintering step?

15:30:28 A. No.

15:30:29 I would interpret this as having gone through the easiest manufacturing process, which would be a single sintering step.

15:30:48 Q. That was my understanding, too.

15:30:50 If we can move to Claim Element Number 2 for which the Court was asked and gave construction, could you please read the -- that element and the Court's construction into the record from the Court's Claim Construction Order, which is Exhibit 6?

15:31:15 A. Page 16 of Exhibit 6, Roman numeral 2, the claim element is: "A conductive first contact disposed externally on the dielectric body and electrically connected to the first plate," colon, in nonbold words, "a conductive material arranged on an

15:31:44 external surface portion of the substantially
15:31:48 monolithic dielectric body and having an electrical
15:31:52 connection with the first plate."
15:32:11 Q. I believe you've testified previously
15:32:15 that there were certain number of parameters or
15:32:21 characteristics that in the Court's Claim Construction
15:32:27 Order required further specificity.
15:32:29 Is this element one of them?
15:32:32 MR. SCHATZ: I'm going to object to the extent
15:32:35 it calls for speculation in that I do not believe the
15:32:38 witness has formed any opinions with respect to the
15:32:42 question that was asked.
15:32:43 And I will counsel the witness not to
15:32:47 speculate if that is the case.
15:32:50 MR. SLONIM: I would remind Mr. Schatz that
15:32:51 the witness has been offered as an expert, potentially
15:32:58 in a relevant art. And as an expert, he has studied
15:33:02 this Claim Construction Order, and I think believe
15:33:05 testified for about ten hours, at least.
15:33:09 And based on that study, I would like
15:33:13 the witness to clarify whether this element as
15:33:16 construed by the Court would require what Dr. Ewell
15:33:22 said previously, further specificity.
15:33:25 MR. SCHATZ: Same objection.
15:33:26 If you need more time to make that

15:33:28 opinion, please do not speculate or guess.
15:33:28 BY MR. SLONIM:
15:33:31 Q. You may answer.
15:33:34 A. I would like to see the appropriate
15:33:39 wording and associated drawings in the 356 patent to
15:33:47 understand how this legal terminology relates to a
15:33:55 more practical description that I might be familiar
15:34:00 with.
15:34:03 Q. Are you saying that the Court's
15:34:07 Claim Element Number 2 as the Court has given you the
15:34:10 definition, you cannot apply it without an
15:34:19 additional -- doing something additional?
15:34:20 A. I would like to see it in context how is
15:34:25 that claim, a conductive first contact, in what
15:34:29 wording has that claim been used within the patent and
15:34:32 what drawings are offered to explain what they're
15:34:36 talking about.
15:34:40 Q. Have you done that in preparation for
15:34:44 your declaration?
15:34:46 A. Yes.
15:34:46 Q. With that understanding, if we can refer
15:34:51 to Figure 2A of the 356 patent, Exhibit 3, what do you
15:34:56 understand the Element 12 to be, the element labeled
15:35:05 12 on Figure 2A?
15:35:06 A. I called this an electrically --

15:35:14 Let's see.
15:35:16 In the manufacturing world, we call that a termination, by which we mean on an external electrical contact of one polarity.
15:35:35 Q. And does that meet the Court's definition of a conductive first contact?
15:35:45 A. Whether it's the first or second contact, it is a conductive contact disposed externally on the dielectric body, yes.
15:35:55 I can't tell from -- without reference, whether it's an appropriate first or second contact.
15:36:01 Q. How would you be able to decide whether it's a first or a second contact?
15:36:06 A. By reading where it fits within the patent to see whether they've talked about the right-hand termination Number 13 in 2A is -- before as being first.
15:36:19 Q. Are you saying that the first and the second contact are interchangeable?
15:36:27 A. That first and second relate to order of discussion, not to right-hand side and left-hand side.
15:36:36 Q. And are you saying that you can refer to either of the contacts, either on the right side or the left side, as first?
15:36:45 Is that your --

15:36:46 A. Logically, first.
15:36:47 But to do so within the context of
15:36:51 talking about this particular term, I'd need to see
15:36:54 how it's used in the patent.
15:37:00 Q. And you haven't done that in your study
15:37:02 of the patent?
15:37:03 Have you been able to determine that?
15:37:05 A. I have done that as part of my review
15:37:08 since the declaration.
15:37:10 Q. I see.
15:37:11 Have you done that as part of your
15:37:12 review before the declaration?
15:37:14 A. Yes.
15:37:14 Q. And what opinion did you form at that
15:37:17 time?
15:37:18 A. My opinion is given in the declaration,
15:37:25 that I can --
15:37:27 Given this definition, given the actual
15:37:33 words there in the patent, and given the associated
15:37:40 drawing, I can understand quite clearly which one
15:37:45 they're referring to by the conductive first contact
15:37:48 disposed externally on the dielectric body.
15:37:52 I can understand that.
15:37:53 MR. SCHATZ: I'm going to caution --
15:37:57 MR. SLONIM: I don't think there is a pending

15:37:59 question.

15:37:59 MR. SCHATZ: Well, I'm going to make a
15:38:02 comment. Fine. I'm going to make a comment.

15:38:02 MR. SLONIM: Brett, I think --

15:38:03 MR. SCHATZ: I'm making a comment. And you
15:38:06 can try --

15:38:06 MR. SLONIM: This will come out of your time.

15:38:08 MR. SCHATZ: You can kind of override me as
15:38:10 much as you want. But I'm going to make a notation to
15:38:13 make sure the record is clear.

15:38:13 There are two --

15:38:15 I want to make sure the witness is
15:38:16 clear.

15:38:17 There are two references to first and
15:38:19 second. There's a conductive --

15:38:22 MR. SLONIM: Brett, I believe --

15:38:24 Q. Dr. Ewell, would you please leave the
15:38:26 room?

15:38:26 I don't think there is a pending
15:38:27 question.

15:38:28 Let Mr. Schatz make his comment on the
15:38:30 record outside of your presence, and then we'll invite
15:38:33 you to come back here.

15:38:35 MR. SLONIM: And, Mr. Schatz, please wait for
15:38:37 your speech. You will make your speech on the record,

15:38:39 and Dr. Ewell will come back and then I'll ask my next
15:38:42 question.
15:38:43 Q. Dr. Ewell, why don't you leave the room,
15:38:44 please.
15:38:44 (Whereupon Dr. Ewell left the deposition
15:38:49 room)
15:38:49 MR. SCHATZ: I'll just make a note for the
15:38:52 record that there are two references to the terms
15:38:54 "first" and "second". There's a reference to a
15:38:56 conductive first contact, and a conductive second
15:38:59 contact.
15:39:00 There's also a reference to a first and
15:39:02 second fringe effect capacitance.
15:39:05 And I think it's clear from Dr. Ewell's
15:39:08 declaration that one of those topics has been
15:39:11 addressed by him, and the other topic has not.
15:39:14 And I think the witness is unclear as to
15:39:19 what is in his declaration, and what is not.
15:39:22 And I think it's appropriate for Counsel
15:39:24 to inform Dr. Ewell to look at his declaration rather
15:39:29 than ask these questions without any context.
15:39:32 That's my note for the record.
15:39:36 MR. SLONIM: Are you finished with your
15:39:39 commentary?
15:39:40 MR. SCHATZ: I'm finished.

15:39:41 MR. SLONIM: Why don't we invite Dr. Ewell
15:39:44 back.
15:40:02 (Whereupon Dr. Ewell entered the
15:40:05 deposition room)
15:40:21 BY MR. SLONIM:
15:40:25 Q. Dr. Ewell, could you please read into
15:40:33 the record the Court's Claim Construction of Element
15:40:37 Number 4 as stated in the Order -- in the Claim
15:40:43 Construction Order, Exhibit 6, Page 16?
15:40:48 A. Number 4, in bold print: "The second
15:40:52 contact being located sufficiently close to the first
15:40:58 contact to form a first fringe effect capacitance with
15:41:04 the first contact," colon, unbold print, "an end of
15:41:12 the first conductive contact and an end of the second
15:41:17 conductive contact are positioned in an edge-to-edge
15:41:22 relationship in such proximity as to form a
15:41:27 determinable capacitance."
15:41:32 Q. Looking at Figure 2A --
15:41:38 A. Okay.
15:41:38 Q. -- as a cross section of a capacitor or
15:41:43 a schematic representation of a capacitor design,
15:41:48 would you please tell me whether that figure, whether
15:41:54 the capacitor of that figure meets or does not meet
15:41:58 the Court's definition of the fourth element that
15:42:02 you've just read into the record, the second contact

15:42:04 being located sufficiently close, and so on?
15:42:10 And you can take your time if you need
15:42:13 to.
15:42:14 A. Sure.
15:42:22 By the second contact and the first
15:42:25 contact, I'm assuming they mean both of those being
15:42:30 disposed externally on the dielectric body such that
15:42:37 in Figure 2A, we're talking about Elements 12 and 13.
15:42:44 Q. That's my understanding.
15:42:46 A. Okay.
15:42:50 And 14, for something to meet the
15:42:55 requirements of 14, that these two elements, the ends
15:43:04 of 12 and the ends of 13, which are positioned
15:43:11 alongside the top dielectric body shown in 2A such
15:43:18 that they have an edge-to-edge relationship --
15:43:23 And the question is, are they in such
15:43:26 proximity as to form a determinable capacitance in
15:43:33 order for me to see whether the body represented by 2A
15:43:38 meets the definition in 4 on Page 16 of Exhibit 6, I
15:43:49 would have to attempt to determine or measure to see
15:43:53 whether I got a measurable capacitance across those
15:43:56 ends.
15:43:58 Q. And would I be correct to understand you
15:44:03 that you -- that the word "determinable" in the
15:44:07 Court's Claim Construction, determinable capacitance,

15:44:15 one way that you can determine a capacitance would be
15:44:15 to measure it?
15:44:17 A. That's one way, is to directly measure
15:44:19 it, yes.
15:44:19 Q. Are there any other ways to determine a
15:44:22 capacitance?
15:44:23 A. If this capacitor were part of a more
15:44:36 complex array of capacitors, I might well have to
15:44:43 indirectly measure it by seeing whether the presence
15:44:48 or lack of this edge fringe effect capacitor affected
15:44:55 at all the properties of the entire array.
15:45:03 Q. Assume that the entire capacitor is the
15:45:08 capacitor reflected in Figure 2A. It doesn't have
15:45:15 anything more, it doesn't have anything less.
15:45:18 Could you tell me whether the capacitor
15:45:21 represented by Figure 2A would meet the definition of
15:45:25 Claim Element Number 4?
15:45:28 And I think we've narrowed that question
15:45:30 down to whether it has a determinable capacitance.
15:45:34 Would that be fair to say?
15:45:37 A. That is fair to say.
15:45:39 There are actually -- In Figure 2A,
15:45:43 there are two fringe effect capacitors: One located
15:45:47 on the top, and one located on the bottom of the
15:45:53 capacitors shown in 2A.

15:45:57 So from a practical sense, as one of
15:46:04 ordinary skill in the art could do, I could take that
15:46:08 capacitor. I would take it as it exists, and I would
15:46:17 measure its properties over the band of frequency of
15:46:21 concern.
15:46:23 Not only its capacitance, but its data
15:46:26 loss, its insertion loss. Those key properties.
15:46:31 Then I would remove the portion of
15:46:40 this -- the external contacts on the top surface, make
15:46:45 those measurements, remove them on the bottom surface,
15:46:48 and make those measurements a third time.
15:46:52 If I compared all three sets of
15:46:57 measurements, if within experimental air they were the
15:47:01 same, I would say any fringe effect capacitor that
15:47:04 might have been formed in the top or bottom was not
15:47:08 measurable, and therefore, was not determinable.
15:47:13 But if I did see an effect -- and
15:47:17 hopefully half the effect would go away when I removed
15:47:20 the top one and half the effect would go away when I
15:47:23 removed the bottom one so I had three sets of
15:47:26 points -- I would say, yes, I had determinable fringe
15:47:31 effect capacitors on that specific product.
15:47:36 Q. Could you direct me in the Court's Claim
15:47:39 Construction of Element Number 4 to the words
15:47:43 "insertion loss"?

15:47:53 A. I would have to look at where that particular term, the amounts in bold, are used within the patent to see whether it at all relates to the properties of a broadband ceramic capacitor array.
15:48:17 In this extract from the patent, I don't see them there.
15:48:23 Q. Do you understand the Court's Claim Construction to be the extract from the patent of Claim Element Number 4?
15:48:31 A. I understand this to be defining the specific words in bold.
15:48:43 Q. Correct.
15:48:44 And what do you think --
15:48:46 And what do you understand from the Claim Construction Order that the Court's definition of that term was based on?
15:49:09 A. My understanding is a speculation, but I believe that the Court was presented with the opposing definitions and the Court heard materials presented at that point, whether it's all orally, whether some of it was written, and said I believe this in the Court's understanding is what is meant by that term.
15:49:50 Q. Did you submit any opinions about appropriate Claim Construction in this case?
15:50:01 A. I submitted no opinions before this

15:50:05 Claim Construction Order was filed.
15:50:08 Q. Did you do that after this Claim
15:50:11 Construction Order was filed?
15:50:16 A. I submitted no opinions on what the
15:50:20 definition should be before or after.
15:50:29 Q. Do you intend to do that?
15:50:32 A. I've not been asked to do so. I don't
15:50:34 intend to voluntarily do so.
15:50:37 Q. Fair enough.
15:50:45 If I direct your attention to Page 14 --
15:51:01 A. Of?
15:51:02 Q. -- of Exhibit 6, the Claim Construction
15:51:06 Order --
15:51:07 Maybe let's start with Page 13.
15:51:08 A. Okay.
15:51:10 Q. Do you see on Page 13 the Roman numeral
15:51:15 Number 4 that in bold print says "The second contact
15:51:21 being located sufficiently close to the first contact
15:51:24 to form a first fringe effect capacitance with the
15:51:29 first contact"?
15:51:30 Do you see that?
15:51:32 A. I see those words at approximately line
15:51:34 6 of Page 13 of 16.
15:51:37 Q. And what do you understand the following
15:51:40 language in the Court's Claim Construction Order

15:51:44 refers to on Page 13 following that heading and on to
15:51:51 Page 14?
15:51:51 MR. SCHATZ: I'll counsel the witness not to
15:51:53 speculate to the extent you haven't formed any
15:51:55 opinions about that.
15:51:56 BY MR. SLONIM:
15:51:56 Q. Let me ask a different question.
15:51:58 Have you reviewed this language in
15:51:59 preparation of your declaration?
15:52:04 Have you reviewed this language in the
15:52:05 Claim Construction Order on Pages 13 and 14 about
15:52:09 Element -- Claim Element Number 4?
15:52:14 A. Sometime back, I did review that.
15:52:21 It is not close to the surface of my
15:52:25 mind, my remembrance of having read the specific words
15:52:30 here on Page 13 and 14.
15:52:32 Q. Okay. And with that, I would ask you to
15:52:37 read on Page 14 the Court's Order that follows the
15:52:49 Roman -- the small Roman numeral 2 under the heading
15:52:53 "Analysis".
15:52:55 Would you please do that?
15:53:00 A. I'm reading from Page 14 of Exhibit 6,
15:53:06 starting at line three, small Roman numeral -- small
15:53:13 numeral 2.
15:53:16 "Analysis: The effect on high frequency

15:53:21 performance is not mentioned in Claim 1, and nowhere
15:53:27 in the specification is the effect on high frequency
15:53:31 performance explained. There is simply no
15:53:34 justification for introducing the language advanced by
15:53:39 Presidio into the construction of the disputed claim
15:53:43 term."
15:53:45 Q. Do you agree with that statement?
15:53:49 A. That this is -- That those are the words
15:53:51 there?
15:53:54 I read that I'm reading the correct
15:53:56 words on the page.
15:53:59 Q. And my question, now that you've read
15:54:01 the words on the page, do you agree with that
15:54:05 statement in the Court's Order?
15:54:08 A. I would -- I agree that is the Court's
15:54:12 Order.
15:54:12 I would have to reread Claim 1 to say,
15:54:18 yeah, I agree.
15:54:20 There's no mention of high
15:54:24 performance -- high frequency performance at all. And
15:54:27 that nowhere in the specification, 16 pages, do they
15:54:32 mention effect on high frequency performance.
15:54:38 But given that, I can be glad to
15:54:42 speculate that given this is true, what would you like
15:54:45 to know?

Q. Have you had a chance to read Claim 1 of 356?
A. I have.
Q. Would you agree with the Court that the effect on high frequency performance is not mentioned in Claim 1?
A. I would have to reread it. I do not have it memorized.
Q. Please do so now.
A. May I?
Q. Absolutely.
A. Thank you.
Q. Any time.
MR. SCHATZ: Excuse me?
BY MR. SLONIM:
Q. Any time, you can read the materials that you think are appropriate.
A. Okay. So I'm reading the Claim 1 which starts in Column 12 of the 356 patent.
And I agree with the Court that nowhere in Claim 1 do they talk about high frequency performance.
BY MR. SLONIM:
Q. Do you also agree with the Court that nowhere in this specification is the effect on high

15:56:04 frequency performance explained, as I've quoted from
15:56:09 Page 14 of the Court's Claim Construction Order?
15:56:12 MR. SCHATZ: I'm just going to counsel the
15:56:14 witness not to speculate on a -- what is or is not
15:56:18 contained in the very long detailed patent.
15:56:23 THE WITNESS: I can't without reading it.
15:56:25 BY MR. SLONIM:
15:56:26 Q. Have you done that analysis in
15:56:28 preparation for your declaration?
15:56:33 A. I've not specifically read the entire
15:56:37 patent to see if they talk about -- to see if they use
15:56:41 the words "high frequency performance" or the close
15:56:45 equivalent of. I've not done that.
15:56:48 Q. Did you submit your opinions about
15:56:54 definiteness of Claim Element Number 4 in your
15:56:57 declaration?
15:56:58 A. I did.
15:56:58 Q. That is Exhibit 2?
15:57:00 A. I did.
15:57:00 Q. And in order to prepare that
15:57:03 declaration, you did not study the entirety of the
15:57:07 specification?
15:57:08 Is that your testimony?
15:57:09 MR. SCHATZ: Objection. That's a
15:57:10 mischaracterization.

15:57:11 The question was whether or not the
15:57:12 patent has language regarding high frequency
15:57:15 performance.
15:57:16 You're misconstruing the witness'
15:57:19 testimony, and it's deceptive.
15:57:22 MR. SLONIM: I would appreciate that you would
15:57:25 state the objection to form, and we will move on.
15:57:27 Q. And let me repeat the question, which is
15:57:30 a different question.
15:57:32 And in order to prepare your declaration
15:57:36 where you expressed opinions about claim element
15:57:41 Number 4, did you search the specification for the
15:57:48 explanation of what high frequency performance means
15:57:54 in the 356 patent?
15:57:58 A. No.
15:58:00 But from my background as one of
15:58:07 ordinary skill in the art, I am, A, familiar with
15:58:14 fringe effect capacitors and where they are used,
15:58:18 which is high performance.
15:58:20 I'm also familiar with industry
15:58:24 expression "broadband capacitor". And I know that to
15:58:30 encompass broad frequency band which -- of which the
15:58:32 high frequency RF end of the spectrum is perhaps the
15:58:37 most important.
15:58:38 So given that context, I understood that

15:58:41 fringe effect capacitors are of most significance in
15:58:46 this high frequency end.
15:58:49 Q. And in the Court's Claim Construction,
15:58:52 could you read me the words that the determinable
15:58:58 capacitance -- any words that say anything about the
15:59:04 fringe effect having a broadband performance that
15:59:09 you've just testified about?
15:59:10 Is there anything about that in the
15:59:13 Court's Construction of that Claim Element Number 4?
15:59:15 A. What pages are you asking me to read to
15:59:17 look for those words?
15:59:19 Q. Right on Page 14 under the Roman numeral
15:59:24 3, "Construction", the same construction as is on
15:59:29 Page 16, he's also presented here.
15:59:33 And reading that construction, which I
15:59:36 believe starts on a line between Lines 9 and 10 --
15:59:44 And it reads: "As an end of the first
15:59:47 conductive contact and an end of the second conductive
15:59:51 contact are positioned in an edge-to-edge relationship
15:59:55 in such proximity as to form a determinable
16:00:00 capacitance."
16:00:00 A. Yes.
16:00:01 Q. In that language, do you see any mention
16:00:03 of the word "broadband performance"?
16:00:06 A. No.

16:00:06 Q. Do you see any mention of the word "broadband capacitor"?
16:00:10 A. No.
16:00:10 Q. Do you understand that Claim 1 does not require broadband capacitor?
16:00:17 And if you need to review Claim 1, please do so.
16:00:21 A. Let me quickly --
16:00:22 Q. Absolutely.
16:00:33 A. I do not see as part of Claim 1 in the 356 capacitor, words stating that this capacitor will be used only in broadband applications or only in high frequency.
16:00:51 I see nothing about its applications at all.
16:00:59 Q. So it is not limited to --
16:01:04 A. Broadband.
16:01:06 It can be broadband. It cannot be broadband. I see nothing there to help me understand which application it might be constricted to.
16:01:18 Q. So any capacitor --
16:01:20 Is that your understanding that any capacitor that has the elements as specified in Claim 1 and as construed by the Court, would meet that Claim 1 regardless of its usage or affect?

16:01:37 MR. SCHATZ: Objection. Mischaracterization of the testimony.
16:01:38
16:01:38 BY MR. SLONIM:
16:01:40 Q. You may answer.
16:01:45 A. Let's go over that one more time. Your
16:01:48 question is not an easy one.
16:01:56 Q. So is it your understanding that any
16:01:59 capacitor that has the elements as recited in Claim 1
16:02:07 and as some of them were construed by the Court, and
16:02:13 if a capacitor meets those elements, regardless of its
16:02:19 use, use of the capacitor, that you would say that
16:02:27 that capacitor is within the scope of Claim 1?
16:02:33 MR. SCHATZ: Objection. Calls for
16:02:35 speculation.
16:02:36 I counsel the witness not to speculate
16:02:38 as to things you've not formed an opinion about.
16:02:50 THE WITNESS: I am -- My understanding of
16:02:54 patent law is limited in that I understand there is
16:03:01 something special about Claim 1 with respect to
16:03:05 subsequent claims.
16:03:08 But I am not fully conversant with all
16:03:13 that implies to be in Claim 1.
16:03:19 BY MR. SLONIM:
16:03:19 Q. Considering Claim 1 by itself, without
16:03:22 being concerned of the following claims in the patent,

16:03:27 is it your opinion that Claim 1 does not require any
16:03:31 particular use of the capacitor that meets the
16:03:34 limitations of Claim 1?
16:03:36 MR. SCHATZ: Objection. Vague.
16:03:36 BY MR. SLONIM:
16:03:38 Q. You may answer.
16:03:42 A. While I do not see specific words in
16:03:48 Claim 1 as to the effect of use in a broadband
16:03:55 application, I am not sufficiently conversant with
16:04:06 patent law as to notice how much of the words
16:04:11 previously to the discussion of Claim 1 can be
16:04:16 construed as to apply or not.
16:04:23 But I could certainly -- were you to cut
16:04:26 out the words "Claim 1" and provide on a separate
16:04:29 piece of paper those words, I could say whether those
16:04:34 words include discussion about the application.
16:04:42 But I'm not a patent lawyer.
16:04:51 Q. Is it your opinion that capacitance is
16:05:00 measured in farads?
16:05:11 A. It is my experience that the property of
16:05:16 capacitance is usually measured in microfarads.
16:05:21 Farad is a very big number.
16:05:24 Q. And microfarad is --
16:05:34 How does microfarad relate to a farad?
16:05:37 A. One-millionth.

16:05:39 Q. Of a farad?
16:05:40 A. Of a farad.
16:05:41 Q. So would it be fair to say that
16:05:44 capacitance is measured in farads?
16:05:47 A. Sure.
16:05:47 Q. And if we would look at Page 14 of the
16:05:54 Court's Claim Construction Order in Exhibit 6 where
16:05:59 it -- the Element 4 has been construed by the Court to
16:06:03 require a determinable capacitance, do you -- is it
16:06:09 your expert opinion that a determinable capacitance
16:06:13 would also be measured in farads?
16:06:23 A. That farads or microfarads --
16:06:26 Q. Farads or microfarads.
16:06:28 A. -- would not be sufficient as to
16:06:31 completely describe capacitance, that there are other
16:06:41 peripheral properties of capacitance such as data loss
16:06:45 and insertion loss would have to be characterized at
16:06:50 the same time to understand a capacitance, especially
16:06:57 if you're not in straight DC applications, direct
16:07:02 current applications.
16:07:03 Q. So is it your opinion that determinable
16:07:18 capacitance is not measured in farads?
16:07:26 A. That it's my opinion that at frequencies
16:07:32 other than direct current, such as RF frequencies to
16:07:38 things like iPods and cell phones work at, you must

16:07:41 make other measurements than straight capacitance in
16:07:46 farads as to characterize the capacitance.
16:07:52 Q. And if you only were interested in a
16:07:55 value of capacitance, would you express that value in
16:07:59 farads?
16:08:03 A. I would express that value in farads at
16:08:10 a particular DC voltage, that a DC voltage, three
16:08:20 volts, say, five volts, and I could then characterize
16:08:24 it exactly in microfarads.
16:08:32 However, once I got into alternating
16:08:34 current, AC, including RF, I would need more
16:08:40 parameters specified than just, say, three volts and
16:08:46 five farads, for instance.
16:08:47 Q. Could you -- If you were interested in
16:08:57 determining a capacitance value, can you do that for a
16:09:03 particular design of a capacitor based on a formula
16:09:10 for capacitance?
16:09:12 MR. SCHATZ: Objection.
16:09:13 Are you referring to determining a
16:09:15 capacitance as it's used in the context of the Court's
16:09:19 Claim Construction, or not?
16:09:19 BY MR. SLONIM:
16:09:23 Q. You may answer if you understand the
16:09:24 question.
16:09:34 A. Sorry. The preciseness of the question,

16:09:37 I've lost it with respect to that subsequent wording
16:09:42 discussion there.
16:09:43 So can you repeat the question, please?
16:09:45 Q. Sure.
16:09:49 If one is interested in determining a
16:09:52 value of capacitance for a particular capacitor
16:10:06 design, can one determine that value of capacitance
16:10:10 based on a formula for capacitance?
16:10:23 A. If one were given a discrete capacitor,
16:10:31 chip, monolithic block, and you asked me what is the
16:10:38 capacitance of this capacitor under a particular set
16:10:44 of conditions, yes, it could be determined.
16:10:49 Q. By a formula?
16:10:51 A. By making measurements, and then putting
16:10:54 the measurements into the formula and doing the
16:10:56 calculations, yes.
16:10:58 Q. If I provided you with Figure 2A in the
16:11:05 356 patent, which is Exhibit 3, and told you that the
16:11:17 thickness of the first -- of Element Number 12, end
16:11:30 termination or a contact, and the thickness of Element
16:11:35 Number 13 were 1 mil each, and the distance between
16:11:41 the edges on the top side of the dielectric body was
16:11:46 30 mils and the dielectric constant was -- of the
16:11:54 insulating layer between them was 2,000, would you be
16:12:00 able to use a formula to determine a capacitance

16:12:06 between the edges of 12 and 13 in Figure 2A?

16:12:12 A. No.

16:12:12 Q. What else would you need to know?

16:12:21 A. Figure 2A, I see as one of ordinary
16:12:30 skill in the art, comprises multiple capacitors. It
16:12:45 is an array of capacitors.

16:12:47 There are fringe effect capacitors on
16:12:52 the top and bottom sides formed by the opposing ends
16:12:56 of externally conductive plates 12 and 13.

16:13:03 In addition, there are internal
16:13:07 capacitance elements formed. For instance, between
16:13:12 Elements 11 and 11 prime, and 10 -- boy, this looks
16:13:19 like it's 10 some -- superscript.

16:13:23 And likewise, it would be 14 and 14
16:13:28 prime, et cetera.

16:13:30 So this is a -- Figure 2A is a complex
16:13:34 array of five or six capacitors. It -- One of
16:13:45 ordinary skill in the art would not be able to
16:13:49 calculate anything close to what would be in reality
16:13:54 determined through measurement.

16:14:03 Q. That was not my question.

16:14:05 A. Okay.

16:14:06 Q. If we limit ourselves to the edge of
16:14:15 contact 12 and edge of contact 13 on top of the
16:14:20 dielectric body, and we -- let's say for the moment,

16:14:26 we assume that there are no plates in Figure 2A that
16:14:35 is just dielectric.
16:14:37 Would you be able to determine by a
16:14:40 formula a capacitance between the edges of 12 and 13,
16:14:47 the fringe effect capacitor that is formed there?
16:14:54 A. There are two fringe effect capacitors
16:14:59 formed, on the top and bottom, of -- I see of the
16:15:04 capacitor represented in 2A.
16:15:06 And if all of the internal plates were
16:15:12 not present, I see a potential -- I'd have to
16:15:23 understand what 14 and 14 on both sides of are.
16:15:28 It could be that that would print
16:15:36 circuit board material or something -- printed circuit
16:15:39 board material are Elements 14. There could be a
16:15:41 fringe effect capacitance there.
16:15:43 Q. I would represent to you that the patent
16:15:47 refers to Elements 14 as the traces of a printed
16:15:52 circuit board.
16:15:53 A. Okay.
16:15:54 Q. And I would agree with you that there
16:15:56 would be a third --
16:15:57 A. Right.
16:15:57 Q. -- fringe effect capacitor between 14
16:16:00 and 14.
16:16:03 A. If in deed those are conductive traces,

16:16:06 then, yes, the location --
16:16:09 And I recall now something about this complex where you mounted a capacitor across the gap in traces, and you took advantage of additional fringe effect capacitors.
16:16:24 So we could have three fringe effect capacitors there if neglecting anything within the body of the part.
16:16:35 Q. Let's say for the purposes of my hypothetical --
16:16:40 A. Right.
16:16:40 Q. -- the body is entirely dielectric. There are no conductive plates within the body. And it is encapsulated in 12 and 13 externally as contacts, and then its placed on traces 14.
16:17:00 And let's say the thickness of the dielectric body, without any internal plates, is 30 mils, and the dielectric constant of that dielectric is 2,000, and the contacts, the thickness of the contacts is 1 mil, and let's say the thickness of the -- and the distance between edges 12 and 13 is 30 mils and -- would you be able to then determine the capacitance values for the top fringe effect capacitor and the bottom fringe effect capacitor, and potentially, if you were asked, for the fringe effect

16:17:47 capacitor between traces 14 and 14?
16:17:52 A. With your hypothetical description, a key element of which is a 30 mil separation between the top and bottom segments of this, I would be surprised if there were anything measurable.
16:18:26 But I would not trust the results of anything I got through a formula. I'd want to put some probes on it in practicality in my instrument lab at a supplier and attempt to measure whether there was any determinable capacitance.
16:18:47 Q. And my question was, which I think you have not answered --
16:18:54 A. Oops. Please.
16:18:56 Q. I will attempt it for --
16:18:58 A. We're working there.
16:19:00 Q. -- the enth time.
16:19:03 A. Enth being a small number, under ten.
16:19:08 Q. Do you always redefine the questions that way?
16:19:10 A. I like to understand things in concrete terms. I tend to be a more -- a practical person.
16:19:17 Q. So the patents are not practical?
16:19:20 A. Oh, they are. But it raises such an --
16:19:25 Enth times seams to be a bit in determinable.

16:19:28 Q. Indefinite?
16:19:29 A. Without being further defined, yes.
16:19:32 Q. Very well.
16:19:39 I didn't ask you whether you would
16:19:41 measure, actually built and measure. But what I
16:19:47 wanted to ask you is whether you would be able to
16:19:50 calculate by a formula, given my assumptions, about
16:19:57 dielectric constant, the thickness of the dielectric
16:20:02 body, the thickness of the contacts 12 and 13, and the
16:20:06 distances between the edges on the top and the bottom,
16:20:09 whether you would be able to calculate by a formula
16:20:15 the capacitance value of the first and second fringe
16:20:22 effect capacitors that would be present between the
16:20:25 edges of the contacts on top and the bottom.
16:20:28 Would you be able to do that by a
16:20:30 formula?
16:20:33 A. I do not know of a formula to do so.
16:20:38 Did I know and trust a formula and have
16:20:43 all of the elements of the formula defined?
16:20:47 I could so calculate. And that's
16:20:51 irrespective of any relationship to the 356 patent or
16:20:56 otherwise.
16:20:59 Q. I see.
16:20:59 Did you review the statement or
16:21:03 declaration by Dr. Dougherty in preparation of your

16:21:06 declaration that was submitted to the Court?
16:21:10 A. I reviewed the basic statement without
16:21:16 all of the associated exhibits. I think they're
16:21:20 called -- some thick says of exhibits that went with
16:21:25 that.
16:21:25 Q. So you've reviewed Dr. Dougherty's
16:21:29 statement?
16:21:29 A. Yes.
16:21:29 Q. And for how long did you review that?
16:21:37 A. I would expect a maximum of perhaps six
16:21:37 hours.
16:21:44 Q. Just on that statement alone?
16:21:47 A. That's a maximum.
16:21:49 I've not got my notes here as to what I
16:21:53 spent on each day and what I spent doing it. I did
16:21:57 not.
16:21:57 Q. I see. I see.
16:21:59 Are your statements --
16:22:00 Are your notes and statements in your
16:22:03 possession detailed as to how much time you spent
16:22:06 reviewing each document?
16:22:07 A. No.
16:22:09 They're detailed as to how much time I
16:22:11 spent each day --
16:22:12 Q. And how much --

16:22:13 A. -- with a total.
16:22:15 Q. How much approximately --
16:22:18 How much time have you spent approximately on studying the materials that you needed to prepare your declaration and preparing your declaration as it was submitted to the Court?
16:22:34 How much time did you spend doing that entire process that culminated in your declaration?
16:22:41 A. On the order of 24 hours.
16:22:43 Q. Over what period of time?
16:22:48 A. Over a period of time of perhaps two-and-a-half weeks.
16:22:55 Q. When were you retained by Presidio to submit this declaration?
16:23:02 A. I do not recall. I'd have to go back and look at the e-mail traffic so doing that.
16:23:10 Q. Who first contacted you from the Presidio side about this case?
16:23:18 A. Alan Devoe.
16:23:19 Q. Have you known Alan before he contacted you about this case?
16:23:30 A. In -- I have met Alan before. I've not spent sufficient time to call him more than an acquaintance.
16:23:42 Q. On how many occasions have you met Alan?

16:23:52 A. Perhaps two to three times over a period
16:23:55 of ten years.
16:23:57 Q. Very well.
16:24:01 Could you please look at your
16:24:03 declaration on Page 2 --
16:24:07 MR. SCHATZ: I was going to say, are you going
16:24:10 to be quick?
16:24:11 MR. SLONIM: Absolutely. Absolutely.
16:24:12 MR. SCHATZ: I just want to take a restroom
16:24:14 break.
16:24:14 MR. SLONIM: Absolutely.
16:24:15 Q. On Page 2 of your declaration --
16:24:17 A. That's Exhibit 2?
16:24:19 Q. Exhibit 2, absolutely.
16:24:20 A. And we're talking Page 2 at the very
16:24:22 top, labeled at the top?
16:24:23 Q. No, labeled 2 as "Declaration of Expert
16:24:28 Witness".
16:24:28 A. Got it. Page 3 of this document, but 2
16:24:32 of the declaration, itself.
16:24:34 Q. Correct.
16:24:35 A. Okay.
16:24:35 Q. And is the list of the documents on top
16:24:40 of this page as the documents you've reviewed in
16:24:45 preparation for this declaration accurate as it is

16:24:51 stated on top of that Page 2 of Exhibit 2?

16:24:59 A. All of those documents were received by
16:25:05 me and reviewed to a varying extent of thoroughness,
16:25:10 yes.

16:25:14 Q. Would you please read me where in this
16:25:17 list there is a statement or a declaration of
16:25:20 Dr. Dougherty that you've testified you've reviewed in
16:25:24 preparation of this declaration?

16:25:34 A. I am assuming that that is somewhere
16:25:38 within the three document sets mentioned in the middle
16:25:45 of this list.

16:25:46 I did not review the documents by this
16:25:52 terminology. I, for instance, reviewed it by
16:25:55 Dr. Dougherty's statement. And I'm sure that
16:25:58 statement is covered here.

16:25:59 Q. Would you please read me what are the
16:26:01 middle parts of this page --

16:26:04 A. "Document Set PCI 0001 - PCI 00013."
16:26:15 "Document Set PCI 00057 - PCI 00161."
16:26:24 "Document Set PCI 00300 - PCI 00377."

16:26:33 Q. And have you reviewed --
16:26:35 In addition to the Dr. Dougherty
16:26:37 statement, have you reviewed any other document that
16:26:41 is not included in this list of materials that you
16:26:46 have reviewed in preparation of your declaration?

16:26:50 A. Can you define reviewed?
16:27:06 Q. Have you ever used that word before?
16:27:09 A. Yes, I -- Yes, I have.
16:27:12 Q. And how have you --
16:27:14 How would you understand that word in connection with reviewing a document?
16:27:18 What would you do if I asked you to review a document?
16:27:21 What would you understand?
16:27:26 A. In ordinary context, I understand a review is to be --
16:27:32 And again, this is another subjective word, a fairly intensive evaluation of the contents of a document as it applies to whatever I'm reviewing it for.
16:27:48 Q. Would it include reading the document?
16:27:50 A. Yes, it would.
16:27:51 Q. In its entirety?
16:27:55 A. It might.
16:27:58 Q. And if I asked you whether --
16:28:04 If you can look on Page 1 of your declaration, Exhibit 2 --
16:28:09 A. Okay.
16:28:09 Q. At the very bottom, if you could read into the record the beginning of Paragraph 4, please.

16:28:19 A. The words "materials used for this
16:28:22 declaration"?
16:28:23 Q. Yes.
16:28:24 A. "Materials used for this declaration.
16:28:28 First, the documents supplied by legal counseling
16:28:32 [sic] are following".
16:28:35 Would you like me to read this entire
16:28:37 list?
16:28:38 Q. No.
16:28:38 A. Okay.
16:28:39 Q. I believe you didn't read it correctly.
16:28:44 You didn't indicate that the word
16:28:48 "first" was underlined.
16:28:49 A. You're right.
16:28:50 Q. And you didn't indicate that there was a
16:28:52 colon after "following".
16:28:54 A. There was a comma after "first" and
16:28:57 after "counsel".
16:28:58 Q. And it was not the word "counseling".
16:29:02 A. If I said "counseling", excuse me. The
16:29:06 word I see it as "counsel".
16:29:08 Q. All right. I just wanted to make sure
16:29:10 that your declaration and your reading of it is
16:29:12 accurate.
16:29:13 A. Yes.

16:29:13 Q. So when you said "materials used for this declaration," is the list of the materials used for this declaration that follows in Paragraph 4 a complete list of documents you've used for this declaration?
16:29:36 A. Yes.
16:29:36 Q. Didn't you say that you've reviewed Dr. Dougherty's statement in preparation for this declaration?
16:29:47 A. Uh-huh.
16:29:49 Q. And it is not reflected on the list of the materials in Paragraph 4?
16:29:54 A. I'm not sure whether this list includes that or not.
16:29:59 Q. Should it include it?
16:30:00 A. Yes.
16:30:00 Q. Because you've used that declaration?
16:30:04 A. Yes.
16:30:04 Q. Should it include any other documents, to the best of your recollection?
16:30:11 A. To the best of my recollection, if this list does not include that, it should. I do not recall having reviewed any other documents other than those supplied in the list.
16:30:28 Q. Have you reviewed Dr. Godshalk's

deposition transcript?

A. No, I have not.

Q. Is have you been provided with a copy of that?

A. No, I have not.

Q. Do you know who Dr. Godshalk is?

A. No.

Q. Have you ever met him?

A. No.

Q. Have you ever spoken to him?

A. I Googled Dr. Godshalk, and came up with three separate ones which might relate. And none of them are at all familiar.

Q. How did you learn about Dr. Godshalk?

A. By reading in one of the documents in this set his name.

Q. And did you ask legal counsel --

Did you see references in any of the documents to the transcript of Dr. Godshalk's deposition?

A. Transcript?

I saw reference to specific words by Dr. Godshalk. I assumed those words came from his deposition, but I did -- I was not tasked to review his deposition.

16:31:44 Q. And once you saw the words from
16:31:48 Dr. Godshalk in one of these documents, have you asked
16:31:51 legal counsel to provide you with the source of those
16:31:57 words where they were originally typed up?
16:32:02 A. No.
16:32:03 I expressed mild curiosity about who
16:32:08 this was and what his expertise was, but was told this
16:32:14 was not part of my -- was not part of what I was being
16:32:21 requested to do.
16:32:22 Q. And what were you requested to do?
16:32:25 A. To review these -- this set of materials
16:32:32 at the top of Page 2A. And if this should be amended
16:32:37 to include Dr. Dougherty's testimony, great. That
16:32:42 should be included in there.
16:32:43 And with those, all of this material
16:32:48 there, to look at the list of definitions given on
16:32:57 Page 16 for six terms of -- that's Page 16 of
16:33:02 Exhibit 6, as defined by the Court, and to come to an
16:33:11 opinion as one of ordinary skill in the art as defined
16:33:14 by Dr. Dougherty, and decide whether that would be
16:33:18 sufficient for me to say, yes, I sufficiently
16:33:24 understand those terms, that if I saw a particular
16:33:31 product, that I could say whether that particular
16:33:36 product in deed satisfies the claims of the patent.
16:33:42 MR. SCHATZ: Can we take our break?

16:33:44 MR. SLONIM: Absolutely.
16:33:45 MR. SCHATZ: Thank you.
16:33:46 THE VIDEOGRAPHER: Going off the record.
16:33:47 The time is 16:33 hours.
16:33:52 (Whereupon a recess was taken)
16:48:07 THE VIDEOGRAPHER: Back on the record.
16:48:11 The time is 16:47 hours.
16:48:20 BY MR. SLONIM:
16:48:21 Q. Dr. Ewell, I direct your attention to
16:48:24 Page 2 of Exhibit 6, which is the Court's Claim
16:48:29 Construction Order.
16:48:30 A. Page 2.
16:48:34 Q. Do you see a picture labeled there as
16:48:40 "Parallel Plate Capacitor"?
16:48:41 A. I do. I see a drawing.
16:48:45 Q. A drawing.
16:48:50 And to your knowledge, as a purported
16:48:56 expert in this field --
16:48:57 A. Purported only is what I get?
16:48:59 I've been demoted. All right.
16:49:02 Q. I think you've been proposed.
16:49:04 A. Oh, okay.
16:49:07 Q. I don't think you've been approved by
16:49:11 the Court as Dr. Dougherty has been.
16:49:11 A. Okay.